

*FNS Coding and Comment Analysis*

**Proposed Rule on Nutrition Standards for  
All Foods Sold in School as Required by the  
Healthy, Hunger-Free Kids Act of 2010**

**Final Summary of Public Comments**

**Docket FNS-2011-0019**

**June 21, 2013**

**Prepared by  
ICF Incorporated**

**This page intentionally left blanks.**

## TABLE OF CONTENTS

<b>Table of Acronyms and Abbreviations</b> .....	<b>viii</b>
<b>Introduction</b> .....	<b>1</b>
<b>1. General feedback on the notice of proposed rulemaking (NPRM)</b> .....	<b>2</b>
1.1. General support for the proposed requirements in their entirety (w/o substantive rationale) .....	2
1.2. General opposition to the proposed requirements in their entirety (w/o substantive rationale) .....	2
<b>2. Legal issues</b> .....	<b>3</b>
2.1. Statutory authority/legal foundation for regulating competitive foods (§ 208 of the Healthy, Hunger-free Kids Act of 2010).....	3
2.2. Statutory authority for including beverage standards.....	3
2.3. Other comments on legal issues .....	3
<b>3. Need for rulemaking</b> .....	<b>4</b>
3.1. Dietary Guidelines for Americans (DGA) and other scientific recommendations.....	4
3.2. Health concerns affecting children and adolescents.....	4
3.3. Nutritional value of competitive foods currently offered in schools.....	5
3.4. Whether existing school nutrition standards for competitive foods are sufficient .....	5
3.5. Alternatives to proposed requirements (e.g., voluntary certification initiatives) .....	6
3.6. Need for additional research/studies or to conduct a pilot project to test proposed rules .....	7
3.7. Other issues related to the need for competitive food standards .....	8
<b>4. Potable water requirement (§ 203 of the Healthy, Hunger-free Kids Act of 2010)</b> .....	<b>9</b>
<b>5. Applicability/scope</b> .....	<b>11</b>
5.1. A la carte.....	11
5.2. School stores.....	12
5.3. Snack bars/concession stands .....	12
5.4. Vending machines .....	12
5.5. Requirements are only minimum standards .....	13
5.6. Request for specific exemption of a product from one or more aspects of competitive food requirements .....	14
5.7. Other comments relating to applicability of the proposal .....	16
<b>6. Definitions</b> .....	<b>19</b>
6.1. Comments on definition of “competitive foods”.....	19
6.2. Comments on definition of “school campus”.....	20
6.3. Comments on definition of “school day” .....	20
6.4. Comments on definition of “entree item”.....	21
6.5. Recommended definitions and other comments relating to definitions .....	22
<b>7. Food requirements</b> .....	<b>24</b>
7.1. General support .....	24
7.2. General opposition.....	24
7.3. Requirement to be a “whole-grain rich” grain product (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 (fruit, vegetable, dairy product, protein food).....	25
7.3.1. Support “whole-grain rich” grain product requirement.....	25
7.3.2. “Whole-grain rich” grain product requirement should be more stringent.....	25
7.3.3. “Whole-grain rich” grain product requirement should be less stringent .....	25
7.3.4. Comments on non-grain food groups .....	26
7.3.5. Other .....	27
7.4. Requirement to contain 10% of the Daily Value of a “naturally occurring” nutrient cited as a public health concern in the DGA (calcium, potassium, vitamin D, or fiber).....	28
7.4.1. Support restriction to only “naturally occurring” nutrients .....	28

7.4.2.	Oppose restriction to only “naturally occurring” nutrients (e.g., fortified nutrients should be allowed) 29	
7.4.3.	Other .....	31
7.5.	Requirement to be a combination food that contains at least ¼ cup of fruit or vegetable.....	32
7.5.1.	Support .....	32
7.5.2.	Fruit/veg requirement for combination food should be more stringent.....	32
7.5.3.	Fruit/veg requirement for combination food should be less stringent.....	32
7.5.4.	Other .....	33
7.6.	Where water is the first ingredient listed, the second ingredient must be one of the above (comments on this aspect of the proposal).....	33
7.7.	Other comments on proposed food requirements.....	33
7.8.	Suggestions to prohibit foods with artificial colors, flavors, and/or preservatives.....	34
<b>8.</b>	<b>Nutrient standards .....</b>	<b>35</b>
8.1.	General support .....	35
8.2.	General opposition.....	35
8.3.	Proposed exemption: fruits and vegetables (fresh, frozen, or canned) are exempt from all nutrient standards if they have no added ingredients except water or, in the case of fruit, packed in 100% juice or extra light syrup.....	35
8.3.1	Support .....	35
8.3.2	Proposed exemption should be more stringent.....	35
8.3.3	Proposed exemption should be less stringent.....	35
8.3.4	Comments on sugar content of vegetables and fruit.....	36
8.3.5	Other comment about general exemptions from nutrient standards .....	37
8.4.	Total fat (≤ 35% of calories).....	37
8.4.1	Support .....	37
8.4.2	Total fat limit should be more stringent .....	37
8.4.3	Total fat limit should be less stringent.....	37
8.4.4	Exemptions from total fat limit .....	38
8.4.4.1	Nuts, seeds, nut/seed butters.....	38
8.4.4.2	Products that consist only of dried fruit with nuts and/or seeds with no added nutritive sweetener or fat .....	39
8.4.4.3	Seafood with no added fat .....	39
8.4.4.4	Reduced fat cheese .....	39
8.4.4.5	Other comments relating to exemptions from total fat limit .....	40
8.4.5	Other comments on total fat limit.....	41
8.5.	Saturated fat (≤ 10% of calories).....	41
8.5.1	Support .....	41
8.5.2	Saturated fat limit should be more stringent.....	42
8.5.3	Saturated fat limit should be less stringent.....	42
8.5.4	Exemptions from saturated fat limit .....	42
8.5.4.1	Reduced fat cheese .....	42
8.5.4.2	Other comments relating to exemptions from saturated fat limit .....	43
8.5.5.	Other comments on saturated fat limit.....	44
8.6.	Trans fat (0g as stated on the label).....	44
8.6.1.	Support .....	44
8.6.2.	Trans fat restriction should be less stringent .....	44
8.6.3.	Other .....	45
8.7.	Sodium.....	45
8.7.1.	General support .....	45
8.7.1.	General opposition.....	46
8.7.3.	Non-NSLP/SBP snack and side items: ≤ 200 mg sodium per portion as packaged .....	46

8.7.3.1.	Support .....	46
8.7.3.2.	Sodium restriction for snacks/sides should be more restrictive.....	47
8.7.3.3.	Sodium restriction for snacks/sides should be less restrictive.....	47
8.7.3.4.	Other comments on snack/side item sodium restriction.....	48
8.7.4.	Non-NSLP/SBP entrée items: $\leq$ 480 mg per portion.....	48
8.7.4.1.	Support .....	48
8.7.4.2.	Sodium restriction for entrees should be more restrictive .....	48
8.7.4.3.	Sodium restriction for entrees should be less restrictive .....	49
8.7.4.4.	Other comments on sodium restriction for entrée items.....	49
8.7.5.	Other comments on sodium limits.....	49
8.8.	Sugar.....	51
8.8.1.	General support .....	51
8.8.1.1.	Support Alternative C1: $\leq$ 35% of calories from total sugars in foods.....	51
8.8.1.2.	Support Alternative C2: $\leq$ 35% of weight from total sugars in foods.....	52
8.8.1.3.	Support some other alternative restriction of sugars in competitive foods.....	53
8.8.2.	Sugar limit should be less stringent than limits discussed in the proposal.....	54
8.8.3.	Comments on exemptions from sugar limit.....	55
8.8.3.1.	Dried fruits/vegetables with no added nutritive sweeteners .....	55
8.8.3.2.	Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat.....	56
8.8.3.3.	Flavored and unflavored nonfat and low-fat yogurt with no more than 30 grams of total sugars per 8oz .....	56
8.8.4.	Comments relating to non-nutritive sweeteners (i.e., low-cal sweeteners, artificial sweeteners) .....	57
8.8.5.	Other comments on sugar limit .....	58
8.9.	Calories.....	59
8.9.1.	General support .....	59
8.9.2.	General opposition.....	59
8.9.3.	Non-NSLP/SBP snack items/side dishes: $\leq$ 200 calories per portion as packaged.....	59
8.9.3.1.	Support .....	59
8.9.3.2.	Calorie limit for snacks/sides should be more restrictive.....	60
8.9.3.3.	Calorie limit for snacks/sides should be less restrictive.....	60
8.9.3.4.	Other comments on snack/side item calorie limit.....	61
8.9.4.	Non-NSLP/SBP entrée items: $\leq$ 350 calories per portion as served.....	61
8.9.4.1.	Support .....	61
8.9.4.2.	Calorie limit for entrees should be more restrictive .....	61
8.9.4.3.	Calorie limit for entrees should be less restrictive.....	61
8.9.4.4.	Other comments on entree item calorie limit .....	62
8.9.5.	Other comments on calorie limits.....	62
8.9.6.	Suggestions to set calorie limits by age/grade.....	63
8.10.	Other comments on nutrient standards.....	64
<b>9.</b>	<b>NSLP/SBP entrees and side dishes sold a la carte as competitive foods.....</b>	<b>65</b>
9.1.	Portions: NSLP/SBP menu items would have to be served in the same or smaller portion sizes as in the NSLP or SBP.....	65
9.1.1.	Support .....	65
9.1.2.	Oppose.....	65
9.1.3.	Other.....	65
9.2.	Support Alternative A1 - NSLP/SBP entrees and side dishes sold a la carte would be exempt from all competitive foods standards except the fat and sugar standards .....	65
9.3.	Support Alternative A2 - NSLP/SBP entrees and side dishes (except grain-based dessert products) sold a la carte would be exempt from all competitive foods standards.....	66

9.3.1.	Support Alternative B1 - Allow an exemption to the nutrient standards for competitive foods for NSLP/SBP menu items on the same day that the items were served in the school meals program .....	66
9.3.2.	Support Alternative B2 - Allow an exemption to the nutrient standards for competitive foods for NSLP/SBP menu items served within 4 operating days of service in the programs .....	67
9.3.3.	Other comments on frequency of allowable sale of NSLP/SBP menu items.....	67
9.4.	Support for some other proposal for NSLP/SBP entrees and side dishes sold a la carte .....	68
9.4.1.	Suggestion that no NSLP/SBP entree or side item should receive an exemption from any competitive food standards .....	68
9.4.2.	Suggestion that all NSLP/SBP entree and side items should be exempt from all competitive food standards.....	69
9.5.	Other comments on NSLP/SBP entrees and side dishes sold a la carte .....	69
<b>10.</b>	<b>Caffeine .....</b>	<b>70</b>
10.1.	Elementary and Middle School: foods and beverages must be caffeine-free.....	70
10.1.1.	Support proposed caffeine restrictions for elementary/middle schools.....	70
10.1.2.	Caffeine standard for elementary/middle schools should be less restrictive (i.e., should allow some caffeine).....	70
10.1.3.	Other.....	70
10.2.	High School: no caffeine restrictions .....	71
10.2.1.	Agree that high schools should have no caffeine restriction .....	71
10.2.2.	Oppose (e.g., standards should include some restriction on caffeine for competitive foods sold to high school students) .....	71
10.2.3.	Other.....	72
10.3.	Suggestions for exemption from caffeine restriction (e.g., chocolate milk).....	72
10.4.	Other comments about caffeine restrictions/allowances (e.g., comments on natural or trace amounts of caffeine not otherwise coded above) .....	72
<b>11.</b>	<b>Beverage requirements .....</b>	<b>73</b>
11.1.	General support .....	73
11.2.	General opposition.....	73
11.3.	Portion sizes.....	73
11.3.1.	Support proposed portion sizes.....	73
11.3.2.	Proposed portion sizes should be bigger .....	74
11.3.3.	Proposed portion sizes should be smaller.....	74
11.3.4.	Elementary schools (up to 8oz portions) .....	74
11.3.4.1.	Support.....	74
11.3.4.2.	Oppose .....	74
11.3.4.3.	Other.....	74
11.3.5.	Middle and high schools (up to 12oz portions) .....	74
11.3.5.1.	Support .....	74
11.3.5.2.	Oppose.....	75
11.3.5.3.	Other.....	75
11.3.6.	Other comments about proposed proportion sizes.....	75
11.4.	Additional high school beverages (beyond water, low fat/non-fat milk, 100% juices).....	75
11.4.1.	20oz servings or less for calorie-free, flavored and/or unflavored carbonated water and other calorie-free beverages that comply with FDA standards of < 5 cal/serving .....	75
11.4.1.1.	Support .....	75
11.4.1.2.	Permissible serving size for calorie-free beverages should be less than 20oz.....	76
11.4.1.3.	Permissible serving size for calorie-free beverages should be greater than 20oz .....	76
11.4.1.4.	Other .....	76
11.4.2.	Low calorie beverages (≤ 12oz servings only).....	77
11.4.2.1.	Support Alternative D1: ≤ 40 cal/8 oz serving (or ≤ 60 cal/12oz serving) .....	77
11.4.2.2.	Support Alternative D2: ≤ 50 cal/8 oz serving (or ≤ 75 cal/12oz serving) .....	77

11.4.2.3.	Support some other restriction for low calorie beverages in high school .....	78
11.4.2.4.	Serving greater than 12oz should be permitted .....	78
11.4.2.5.	Other comments about low calorie beverages.....	78
11.4.3.	Comments on not allowing sale of these additional beverages in the meal service area during the meal service period.....	79
11.4.4.	There should not be any restrictions for competitive beverages sold in high schools.....	79
11.4.5.	Other comments about beverages in high schools.....	80
11.5.	Other comments about beverage requirements.....	80
<b>12.</b>	<b>Accompaniments .....</b>	<b>82</b>
12.1.	General support .....	82
12.2.	General opposition.....	82
12.3.	Must be pre-portioned .....	82
12.3.1.	Support .....	82
12.3.2.	Oppose.....	82
12.3.3.	Other .....	83
12.4.	Must “fit” within the nutrient profile of the food that they accompany .....	83
12.4.1.	Support .....	83
12.4.2.	Oppose.....	83
12.4.3.	Other .....	84
12.5.	Other comments about accompaniments.....	84
<b>13.</b>	<b>Fundraisers .....</b>	<b>84</b>
13.1	Competitive foods and beverage standards would not apply to foods or beverages sold at “a limited number” of school fundraisers (on school grounds, during school hours).....	84
13.1.1	Support Alternative E1 - Allow State agencies discretion to establish limitations on the number of exempt fundraisers that may be held during the school year.....	84
13.1.2	Support Alternative E2 - Allow State agencies to set exempt fundraising frequency standards, subject to USDA approval .....	85
13.1.3	Support some other determination of the “limited number” of school fundraisers that would be exempt from competitive foods standards .....	85
13.1.4	Other comments on exemptions from competitive food/beverage standards for fundraisers .....	86
13.1.5	Foods sold at all fundraisers should have to meet competitive food standards.....	86
13.2	Specially exempted fundraiser foods/beverages may not be sold during school meal service in the meal service area.....	87
13.2.1	Support .....	87
13.2.2	Oppose.....	87
13.2.3	Other .....	87
13.3	Other comments about fundraisers .....	88
<b>14.</b>	<b>Foods of minimum nutritional value (FMNV).....</b>	<b>89</b>
<b>15.</b>	<b>Monitoring .....</b>	<b>89</b>
15.1	School food authority (SFA) .....	89
15.1.1	Support making SFAs responsible for ensuring and documenting that foods sold by the school food service to students during the meal service periods, in meal service areas, meet the competitive food standards89	
15.1.2	Oppose proposed SFA responsibilities regarding monitoring.....	90
15.1.3	Other comments on SFA responsibilities regarding monitoring .....	91
15.2	Local educational agency .....	92
15.2.1	Support requiring LEAs to require that, at a minimum, receipts, nutrition labels, or product specifications be maintained by those designated as responsible for competitive food service at the various venues in the school.....	92
15.2.2	Oppose proposed LEA responsibility regarding monitoring.....	93
15.2.3	Other comments on LEA responsibilities regarding monitoring.....	93

15.3	State agency.....	95
15.3.1	Support making State agencies responsible for monitoring compliance with competitive food standards through a review of LEA records documenting compliance with these requirements .....	95
15.3.2	Oppose proposed State agency requirements regarding monitoring .....	95
15.3.3	Other comments on State agency requirements regarding monitoring.....	95
15.4	Other comments about recordkeeping or monitoring .....	96
<b>16.</b>	<b>Enforcement.....</b>	<b>98</b>
16.1	Support proposal that if an SA determines during administrative review that violations have occurred, correction action plans must be submitted to SA by LEA and SFA .....	98
16.2	Oppose proposal regarding corrective action plan .....	98
16.3	Other comments on enforcement of competitive foods and beverage standards .....	99
<b>17.</b>	<b>USDA implementation technical assistance/guidance.....</b>	<b>100</b>
<b>18.</b>	<b>Regulatory Impact Analysis (Executive Order 12866 analysis).....</b>	<b>102</b>
18.1	Behavioral responses of students and schools to proposed rules (e.g., student food choice, school participation in NSLP/SBP) .....	102
18.2	Economic effect on children and their families.....	103
18.3	Benefits.....	103
18.3.1	Social cost savings (e.g., associated with excess body weight).....	103
18.3.2	Ancillary benefits (e.g., improving nutritional value of competitive foods will support the parents' efforts to promote healthy choices at home and at school, reinforce school-based nutrition education, and contribute to overall effectiveness of school nutrition environment in promoting healthful food and physical activity choices) .....	104
18.3.3	Other comments about benefits .....	104
18.4	Costs .....	105
18.4.1	Effects on school revenue.....	105
18.4.2	Administrative costs .....	106
18.4.3	Impacts on food manufacturers (e.g., ability of products to meet proposed standards with changes to product packaging size or product formulation).....	106
18.4.4	Impacts on vendors that supply food items to schools .....	107
18.4.5	Other private sector impacts .....	107
18.4.6	Other comments about costs.....	108
18.5	Other comments about RIA .....	108
<b>19.</b>	<b>Regulatory Flexibility Analysis (RFA) .....</b>	<b>109</b>
19.1	Agree with Initial RFA.....	109
19.2	Disagree with Initial RFA .....	109
19.3	Impact on small SFAs/schools .....	109
19.4	Impact on small food industry entities (e.g., manufacturers, wholesalers, distributors, vending machine operators, food service management companies).....	109
19.5	Reasonable alternatives to reduce small entity impacts .....	110
19.6	Other comments on impact on small entities.....	110
<b>20.</b>	<b>Other issues related to the rule .....</b>	<b>110</b>
20.1	Other comments on regulatory text (issues not addressed above).....	110
20.2	Comments/concerns addressing specific products .....	111
20.3	Student food preferences .....	112
20.4	Request to extend comment period/issue a supplemental NPRM or interim final rule.....	112
20.5	Implementation/effective date .....	113
20.6	Request to hold public meeting(s).....	114
20.7	Suggestions for collaboration .....	114
20.8	Unfunded Mandates Reform Act.....	115
20.9	Federalism impacts .....	115
20.10	Consultation/coordination with Indian Tribal Governments.....	115



20.11	Paperwork Reduction Act.....	115
20.12	Environmental impacts.....	116
20.13	Additional issues not addressed in the NPRM .....	116
<b>21.</b>	<b>Out of scope.....</b>	<b>117</b>
21.1	Comments on nutrition standards or meal pattern requirements in the National School Lunch and School Breakfast Programs .....	117
21.2	Comments on other Healthy-Hunger Free Kids Act of 2010 requirements .....	118
21.3	Requirements for physical activity or other local school wellness policies .....	118
21.4	Other out-of-scope comments .....	118

**Table of Acronyms and Abbreviations**

ADHD	Attention Deficit Hyperactivity Disorder
BPA	bisphenol-a
CDC	Centers for Disease Control and Prevention
CFR	Code of Federal Regulations
CN	Child Nutrition
DGA	Dietary Guidelines for Americans
FDA	U.S. Food and Drug Administration
FMNV	Foods of minimal nutritional value
FNS	Food and Nutrition Service
FR	Federal Register
FSDU	Foods for Special Dietary Use
HHFKA	Healthy, Hunger-Free Kids Act of 2010
HUSSC	HealthierUS School Challenge
IOM	Institute of Medicine
LEA	Local educational agency
mg	Milligrams
NPRM	Notice of Proposed Rulemaking
NSLP	National School Lunch Program
RIA	Regulatory Impact Analysis
RFA	Regulatory Flexibility Analysis
SBP	School Breakfast Program
SFA	School Food Authority
TPSNP	Texas Public School Nutrition Policy
USDA	U.S. Department of Agriculture
WIC	Women, Infants, and Children

## **Introduction**

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) published a proposed rule on February 8, 2013 to obtain public comment with regard to nutrition standards for all foods sold in school as required by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Through June 5, 2013, FNS had received a total of 247,871 public comments on the rule (hereinafter referred to as the All Foods proposed rule, All Foods NPRM, proposed competitive food requirements, or proposed competitive food standards) in docket FNS-2011-0019.<sup>1</sup> Approximately 245,665 of these were copies of form letters, nearly all of which were related to mass mail campaigns directed by Prevent Obesity, PEW Charitable Trusts, Food & Water Watch, the Center for Science in the Public Interest, and the American Heart Association. The remaining comments – over 2,200 – included some unique content requiring analysis.

FNS asked ICF Incorporated to analyze and summarize these public submissions. ICF's process for analyzing public comments builds upon its commercial web-based CommentWorks® software product. As a first step, ICF obtained electronic copies of the comments from FDMS, so that the comments could be imported into CommentWorks for analysis. FNS and ICF staff developed a hierarchical coding structure to include key issues identified in the rule and addressed by the commenters. ICF staff then analyzed all unique comment letters, identifying whether each submission contained substantive excerpts (“bracketing”), and using the coding structure to associate each excerpt to the issue(s) to which it applies (“coding”).

ICF's review of these comment letters identified 497 unique submissions that contain particularly substantive comments, 1,692 other unique submissions, 245,665 form letters from 104 different mass mail campaigns, and 17 duplicate and non-germane submissions. After analyzing all of the unique submissions, ICF coded excerpts from these letters by coding structure category. ICF staff then distilled the content from the verbatim excerpt quotes into the detailed comment summaries that are included in today's document. The comment summaries that follow are organized into issue topic areas, as indicated in the table of contents.

Comment counts provided at the beginning of most sections reflect all submissions (i.e., both unique comments and the form letter campaigns received on the rule). This summary report, however, is not intended to be an exhaustive discussion of all unique comments received on the proposed rule. Rather, it attempts to capture common themes discussed by commenters and highlight particular issues detailed in some of the more substantive of comments. The content of this report should be viewed with ICF's other final reports and deliverables on this project to gain a full understanding of the themes addressed by the commenters on the rule. Taken together, these materials should provide a comprehensive picture of the opinions expressed by the public.

In addition to the detailed comment summaries, we have provided a separate document titled “Appendices and Letter Attributes Report” that, among other items, includes a table with counts of the number of submissions that address each issue.

---

<sup>1</sup> The total number of entries in the docket is closer to 4,714; however, several commenters bundled together thousands of submissions into just a few of these entries (e.g., Prevent Obesity, PEW Charitable Trusts, Food & Water Watch, Center for Science in the Public Interest, and the American Heart Association). These and other bundled entries account for approximately 243,157 additional submissions, raising the total number of submissions received on the rule to 247,871.

**1. General feedback on the notice of proposed rulemaking (NPRM)**

**1.1. General support for the proposed requirements in their entirety (w/o substantive rationale)**

Approximately 17,830 submissions, including a mass mail campaign, expressed general, overall support for the proposed rule in its entirety without commenting on specific proposed provisions of the NPRM. Where these commenters provided reasons for their support, their rationale generally included one or more aspects of the following arguments:

- Children consume a significant portion of their daily food and beverage intake at school, where nutritionally poor foods and beverages are widely available. Therefore, the proposed competitive food requirements would help contribute to a reduction in childhood and adolescent obesity and associated chronic health conditions.
- The All Foods Rule would support parents' efforts to instill healthy eating habits in their children, educate children on the importance of healthy eating, and help them make life-long nutritious food choices.
- Equalizing standards for competitive foods and the reimbursable meals in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) would facilitate nutritional consistency across all programs, which would "level the playing field" and would increase participation in school meal programs.

These themes are explored in greater detail throughout the remainder of the summary as they apply to the support for various aspects of the proposed rule.

**1.2. General opposition to the proposed requirements in their entirety (w/o substantive rationale)**

Approximately 430 submissions expressed general opposition to the All Foods proposed rule in its entirety without commenting on specific proposed provisions. Where these commenters provided reasons for their opposition, their rationale generally included one or more aspects of the following arguments:

- Decisions regarding what children eat during the school day should be left to children, parents, and/or local school districts, rather than mandated by USDA.
- The recent changes to NSLP/SBP requirements have caused financial distress to schools and districts, increased plate waste, and resulted in students not obtaining enough calories at school. This rule would extend and exacerbate those negative impacts.
- Instituting overly restrictive guidelines would penalize districts and schools that are already making significant efforts to sell healthy food options to students.
- The rule would be ineffective because students would still be able to obtain non-regulated foods in packed lunches, fundraisers, classroom parties, off-campus sources, and at home.

These themes are explored in greater detail throughout the remainder of the summary.

## **2. Legal issues**

### **2.1. Statutory authority/legal foundation for regulating competitive foods (§ 208 of the Healthy, Hunger-free Kids Act of 2010)**

Approximately 20 submissions commented on USDA's statutory authority or legal foundation for regulating competitive foods. Several commenters, including general advocacy organizations and health care associations, said the proposed rule reflects the evidence-based recommendations in the 2010 Dietary Guidelines for Americans (DGA), as well as in the Institute of Medicine's (IOM's) 2007 report "Standards for Foods in Schools: Leading the Way Toward Healthier Youth." These commenters concluded that USDA clearly considered existing model, State, local, and industry standards, as well as the practical application of the standards. Similarly, a couple of commenters from the food industry and a trade association expressed appreciation for USDA's consideration of existing school nutrition standards, including voluntary standards for beverages and snack foods, and the practical application of the nutrition standards.

In contrast, stating that the HHFKA requires FNS to consider the practical application of existing nutrition standards, which includes how those standards fit into the existing framework for reimbursable foods, a trade association asserted that FNS proposed standards for competitive foods without the benefit of even one full school year during which the reimbursable standards were in effect. The trade association also noted that some of the reimbursable food standards (e.g., those for the SBP) do not become effective until the 2013-2014 school year and thereafter. Thus, the commenter urged FNS to issue any competitive food standards as an interim final rule to allow for the possibility of revision to incorporate any outcomes from implementation of the reimbursable food standards and the IOM panel on sodium reduction. This commenter further stated that the HHFKA requires that the competitive food standards take into account lessons learned from the reimbursable standards, particularly with respect to student acceptance and financial impacts on schools.

This trade association also suggested that the competitive food standards should be consistent with those established for reimbursable foods, which this commenter stated would be in line with the HHFKA. According to this commenter, aligning the competitive food standards with those established for reimbursable foods would provide practical benefits, including ease of administration, more efficient meal planning, and decreased costs for schools due to lower required levels of inventory.

### **2.2. Statutory authority for including beverage standards**

Approximately 15 submissions addressed USDA's statutory authority for including beverage standards in the proposed rule. Several commenters, including advocacy organizations and health care associations, agreed with USDA's interpretation that Congress intended for the standards to apply to foods and beverages. Some of these commenters cited the U.S. Food and Drug Administration's (FDA's) definition of "food" and stated that there is precedent for USDA to establish standards for beverages, including standards for beverages in reimbursable school meals and in the Women, Infants, and Children (WIC) program. These commenters also stated that the HHFKA specifically directs the Secretary to consider existing school nutrition standards, including beverages and snack foods in section C(ii)(II).

### **2.3. Other comments on legal issues**

Approximately four submissions provided comments on other legal issues relating to the proposed rule. A professional association and a school food service staff member commented that the competitive food standards final rule should provide flexibility, simplicity, and minimum standards, consistent with the current reimbursable NSLP/SBP meal pattern guidelines, while limiting any additional burdens as

required by the HHFKA. A professional association recognized that the intent of the All Foods Rule is to regulate competitive foods within schools, but concluded that the rule proposes an unprecedented expansion of regulation in an area that had previously been under State and local control.

### **3. Need for rulemaking**

#### **3.1. Dietary Guidelines for Americans (DGA) and other scientific recommendations**

Approximately 830 submissions addressed the DGA and other scientific recommendations on which the competitive food standards could be based. Many commenters, including professional associations, school food service staff members, advocacy organizations, trade associations, a State department of health, a health care association, a school district, individual commenters, and a county public health department, commented that the proposed rule was consistent with the latest dietary science, standards, laws, and nutrition guidelines, including the DGA. However, a State department of education asserted that the rule presents competitive foods as “good” foods versus “bad” foods, which contradicts the DGA. Several commenters, including professional associations, a State department of education, school food service staff members, and a school district, said the rule should incorporate and integrate the standards and recommendations provided in the HealthierUS School Challenge (HUSSC), the IOM, and the most recent DGA when possible.

#### **3.2. Health concerns affecting children and adolescents**

Approximately 70,650 submissions, including a mass mail campaign, addressed health concerns affecting children and adolescents. A great number of these commenters, including , advocacy organizations, health care associations, professional associations, local government entities, individual commenters, and school districts, referenced the nation's growing obesity epidemic among children and adolescents, asserted that foods and beverages available for sale in school play an important role in children's diets, and stated that strong nutrition standards for all foods sold in school would make a critical contribution to improved dietary intake and the long-term health of millions of children. Some of these commenters said that the problem extends beyond obesity to other associated chronic diseases, such as cardiovascular disease, hypertension, and diabetes. An advocacy organization cited its survey which it stated demonstrates that more than 80% of parents are concerned about childhood obesity and more than 50% are very concerned.

Numerous commenters, including , advocacy organizations, a State department of education, individual commenters, and a health care association, stated that students consume 35-50% of their daily calories at school where unhealthy competitive foods are widely available. Some commenters, including advocacy organizations, a health care association, and an individual commenter, stated that eating patterns established in childhood often continue into later life, implying that early intervention on adopting healthy nutrition behaviors is a priority. A few commenters, including a professional association, an individual commenter, and a trade association, stated that children who eat well are not just healthier, they also perform better in school.

Several commenters, including , school food service staff members, a food bank, individual commenters, and a professional association, said low-income students are disproportionately affected by the high rates of overweight, obesity, and associated chronic diseases due to their dependence on federal meal programs. A food manufacturer urged that competitive food standards should ensure access to sufficient energy from nutrient-dense foods for low-income children who might otherwise not have sufficient intake to support growth and development.

This food manufacturer also argued that foods served in schools, either as a reimbursable meal, a la carte, or in vending, are not the primary cause of childhood obesity, nor can they be the sole solution. However, a health care professional stated that nutritional and dietary education should be vested in the school system since parental responsibility has empirically failed to avert the national health crisis of obesity. This commenter further asserted that parents often suffer from obesity and it is the home environment that becomes a significant factor predisposing children to the similar behaviors regarding poor food choices and lack of portion control.

A commenter from the food industry argued that USDA has an opportunity to address the high rates of tooth decay through the new competitive food standards. This commenter stated that tooth decay is the single most common chronic childhood disease and tooth decay disproportionately affects children from low-income populations. Further, this commenter asserted that both FDA and IOM recognize a causal relationship between dietary behavior and the chronic disease of tooth decay. Thus, the commenter concluded that USDA should consider other preventative oral health measures, in addition to encouraging a healthy diet (e.g., chewing sugar-free gum), to enhance students' existing oral health routines during the school day and effectively improve their lifelong health.

### **3.3. Nutritional value of competitive foods currently offered in schools**

Approximately 40 submissions provided comments on the nutritional value of competitive foods that are currently offered in schools. Many commenters, including , advocacy organizations, a health care association, school food service staff members, professional associations, individual commenters, and industry associations, expressed concern that competitive foods tend to be particularly high in calories, fat, sugar, and salt (e.g., cookies, cakes, brownies, candy, fruit and sports drinks, and carbonated soda), and have a negative impact on students' health. A few advocacy organizations asserted that children consume almost 400 billion calories each year from junk food sold in schools.

An advocacy organization and a professional association stated that a number of studies find a link between competitive food availability and poor dietary quality, including higher intake of calories, fat, high-fat, and sugar-sweetened beverages, and lower intake of key nutrients, fruits, vegetables, and milk. Some commenters, including advocacy organizations and a professional association, asserted that recent research has found that the implementation of strong nutrition standards for snack and a la carte foods and beverages not only decreases students' access to, purchase of, and consumption of unhealthy foods and beverages, but also increases their access to, purchase of, and consumption of healthier options.

### **3.4. Whether existing school nutrition standards for competitive foods are sufficient**

Approximately 36,250 submissions, including a mass mail campaign, addressed existing nutrition standards for competitive foods. Some commenters, including , a nutrition professional, school food service staff members, individual commenters, and a student, stated that current local, State, and Federal nutrition requirements are adequate to govern competitive foods served in schools. Several commenters, including State departments of education, a city public health department, a school district, and an advocacy organization, praised specific State and local food and beverage policy for schools. An individual commenter suggested that local school food authorities (SFAs) and school districts should have the flexibility and authority to implement their own wellness policies regarding competitive foods with guidance from USDA, rather than strict mandates.

However, numerous commenters, including advocacy organizations, a health care organization, a trade association, a large city department of public health, professional associations, and an academic commenter, stated that while many states and localities have made progress in adopting stronger competitive food and beverage standards, nutritionally poor foods are still widely available in the

majority of schools. Some of these commenters stated that, given this widespread availability, about 40% of all students consume at least one competitive food on a typical school day, with higher consumption in secondary school than elementary school and more frequent consumption during lunch compared with other times during the school day or after school.

Further, many commenters, including advocacy organizations, health care associations, trade associations, and professional associations, stated that the 30-year-old Federal nutrition standards for competitive foods only prohibit the sale of foods of minimal nutritional value (FMNV) (e.g. carbonated soft drinks, chewing gum) during the meal service period. These commenters asserted that the current Federal standards are too limited in scope, out-of-date, and not aligned with current nutrition science, dietary patterns, or public health concerns about child nutrition and childhood obesity.

Numerous commenters, including advocacy organizations, a professional association, and a health care association, stated that variation between State and local standards poses challenges to schools, as well as food and beverage manufactures, as they attempt to obtain or formulate healthier products for schools. Additionally, these commenters stated that a recent analysis of State competitive foods policies by the Centers for Disease Control and Prevention (CDC) found that as of October 2010, there were 39 different State standards for competitive foods, and none of them fully met the standards recommended by the IOM.

An academic commenter asserted that, despite emerging evidence illustrating the positive effects that State and/or district policies are having on improving school food environments, schools are not fully compliant (e.g., classroom parties, food as a reward, and in-school fundraisers). Thus, this commenter suggested that there are opportunities for improvement, especially at the secondary level where this commenter said that State and district policies are particularly weak.

Some commenters addressed the effectiveness of local school wellness policies. An individual commenter and school food service staff member stated that their local school wellness policies are not sufficient to control competitive foods sold at school-based fundraisers, and both commenters requested strict Federal rules for fundraisers. A professional association and individual commented that competitive food standards are the weakest element in district wellness policies. This individual commenter asserted that many district-level policies only apply to certain locations, grade levels, or categories of beverages or nutrients in foods, and stated that few districts have strong competitive food standards that are definitively required across grade levels, locations of sale, or for a wide range of beverages and nutrients in foods.

### **3.5. Alternatives to proposed requirements (e.g., voluntary certification initiatives)**

Approximately 80 submissions provided comments on alternatives to the proposed rule, including participation in voluntary certification initiatives. Several commenters, including a State Governor, a school food service company, school food service staff members, individual commenters, and a trade association, said more effort should be focused on consumer education rather than regulation. Some of these commenters reasoned that severely restricting competitive food options can direct children's diets but does not teach well-balanced eating habits or the importance of physical activity. A State Governor commented that serious school nutrition problems should be resolved with the specific local school district, rather than unnecessarily impacting everyone. This commenter suggested that a better option would be for USDA to provide information to schools on healthier food options and offering teachable lesson plans for healthy eating. Further, this State Governor suggested that USDA could disseminate best practices among schools and State government to encourage healthy living. A vending company owner suggested that nutrition information should be disclosed on items in vending machines, rather than restricting choices.



Other commenters, including school food service staff, a public citizen, a county public health department, and a professional association, offered examples of successful State legislation and policies (e.g., Texas Department of Agriculture's Texas Public School Nutrition Policy (TPSNP)) that could potentially serve as a model for the USDA competitive food regulations. A school food service staff member suggested that FNS should allow a minimum 3-year exemption for states that have had school competitive food policies in place while the rest of the states join in addressing competitive food sale issues. Some commenters, including , an industry association, individual commenters, and a professional association, said State and local educational agencies (LEAs) are the ones best positioned to make decisions that reflect the diversity of their students, schools, and lunch programs and are better suited than a prescriptive, one-size-fits-all standard.

Several commenters, including advocacy organizations, a professional association, and a school food service staff member, urged USDA to encourage the elimination of competitive foods during the school day. An advocacy organization commented that, in schools where competitive foods have been eliminated, participation in school meals improved, resulting in increased revenue for the meal program. In addition, this commenter argued that eliminating competitive foods would avoid the stigma for low-income students who cannot afford these items and would prevent junk food companies from marketing to children. Lastly, this advocacy organization stated that some states and school districts are already eliminating competitive foods.

Some commenters provided other or additional alternatives to the All Foods NPRM's approach. An individual commenter and a school food service staff member suggested that USDA adopt the current Alliance for a Healthier Generation Guidelines as the Federal competitive food requirements. A trade association proposed that USDA adopt the National Automatic Merchandising Association Fit Pick<sup>®</sup> program because this commenter asserted it would provide USDA with an option that provides flexibility for the industry and lessens the impact on small business on both the revenue and expense sides.

A State department of education suggested that the standards should be voluntary, and that instead of spending resources on monitoring, USDA should provide incentives, technical assistance, and training to the schools. Similarly, a school food service staff member commented that the time taken to develop this proposed rule would better be used developing training materials and resources to assist school districts struggling with the new meal pattern requirements that may not have resources to make informed decisions. A school food service staff member and an individual commenter argued that the money spent to create and monitor competitive food standards would be better spent subsidizing farmers or distributors so that produce and other healthy foods could be purchased for a reasonable price.

### **3.6. Need for additional research/studies or to conduct a pilot project to test proposed rules**

Approximately 320 submissions suggested additional research or that FNS conduct a pilot project to test the proposed competitive food requirements. Several commenters, including school districts, a school, school food service staff members, a food manufacturer, and an individual commenter, suggested that USDA should implement the regulations only after a pilot program has been conducted to test the overall effect that the rule would have on student health and the financial impact on schools. Some of these commenters recommended that the pilot include a wide range of schools that vary in terms of: socio-economic make up, levels of free- and reduced-meal percentages, off- and on-campus eating options, large and small school systems, and systems that offer single entrée versus multiple entrée choices. A professional association, a school district, and an individual commenter suggested piloting the standards at elementary schools and reevaluating the standards as part of reauthorization in 2015. In contrast, a nutrition professional asserted that because over 5,000 schools have already voluntarily met the competitive foods criteria of the HUSSC, these schools have served as a national pilot study for indicating the ability of schools to adhere to these standards.

Many commenters, including trade associations, food manufacturers, a school district, a school food service company, an advocacy organization, an association representing school boards across the country, and a professional association, suggested several areas for further study before required implementation of a final rule, including:

- The financial and administrative (recordkeeping and monitoring) impact on schools, including schools that depend on competitive foods for financial solvency.
- The impact on the U.S. food industry, including small businesses.
- The impact of the competitive foods requirements on health indicators, students' school day dietary intakes, student participation in the NSLP/SBP, food service operations, and plate waste.
- The current sodium levels for school meals.
- The safety of artificial sweeteners.
- Data on competitive foods reform programs that have been implemented or piloted in certain states.

### **3.7. Other issues related to the need for competitive food standards**

Approximately 2,850 submissions provided comments on other issues related to the need for Federal competitive food standards. Some of these comments expressed a variation of support for the rule. A few commenters, including two State departments of education, stated that it is appropriate and timely to extend nutrition standards to all foods and beverages sold at schools. A health care association commented that the proposed rule reflects the growing consensus among parents, public health and nutrition experts, and industry that we must improve the nutritional content of competitive foods sold in schools. An advocacy organization and a school food service staff member asserted that the sale of unhealthy competitive foods and beverages leads to decreases in school meal participation, which means that fewer children consume meals at school that meet nutrition standards and schools receive less cash and commodity support through the Federal school meal programs. Another advocacy organization argued that because school children are mainly situated in controlled environments at school and their food choices are often limited, it is important that the foods offered have sensible levels of fat, saturated fat, sodium, sugar and calories. A health care association commented that the proposed competitive food requirements would help dietitians and other nutrition professionals with the "trilemma" of school nutrition challenges: meeting the nutritional requirements of the meal; minimizing program costs (while attempting to maintain and/or improve outdated facilities); and maximizing student acceptability and participation.

Some commenters, including advocacy organizations and a professional association, argued that the proposed rule is especially important to the well-being of children from low-income families who depend on inexpensive Federal meals for a significant portion of their daily nutrition. These commenters stated that peer pressure and stigma can drive low-income students to purchase less healthy competitive foods with scarce dollars instead of eating healthy school meals. Accordingly, a school food service staff member commented that implementing consistency for all foods served in schools has great potential to positively impact the nutritional and social aspects of the school lunch experience. However, as part of a submission from a class, a student stated that competitive foods sold in the student-run school store have

no impact on low-income children because the store only accept cash and children cannot use the balance of their school account to purchase snacks, drinks, etc.

Other comments addressed the burden of responsibility for healthy childhood diets. An individual commented that competitive food requirements cannot address the fact that a significant share of the burden of making children eat healthier must be placed on the parents and guardians of children. The individual asserted that children must be educated on the benefits of healthy food choices, which must be constantly reinforced during the time they spend outside of school. A health care professional stated that caregivers of young children are in a unique position to encourage them to establish good dietary habits, and help them to avoid the food-based challenges so prevalent in our society today. Another health care professional stated that it is imperative to demonstrate healthy eating behaviors in school, and suggested that food offered in schools should be a reflection of what we would teach our youth to eat. A health care association commented that schools and communities have a shared responsibility to provide students with access to high-quality, affordable, nutritious foods and beverages.

A trade association asserted that the proposed rule would drastically limit the choices for all students and limit the flexibility of State and local authorities to determine the best options for local students. A State department of education stated that while the goal to increase consumption of healthy products in schools is commendable, it is incumbent on the consumer to decide to spend their money on these products.

A vending company owner commented that snacks and beverages provided in the schools are being blamed as a major contributor to the obesity problem, but reports from vending machines show that, on average, high school students only purchase one to two snacks and one to two sodas per week. Similarly, a trade association asserted that vending and soda machines are not the culprit behind the nation's growing obesity problem. To support its assertion, the trade association cited a study that it stated concludes that students purchased less than one candy bar, salted snack item, or soda per student per week. This commenter argued that removing vending machines from schools or imposing overly restrictive limitations on what can be sold would have little impact on such a complex problem.

A few commenters, including , school districts, a professional association, individual commenters, and school food service staff members, said the rule should establish school nutrition programs as the primary food provider within school buildings during the school day.

A health care association stated that any strategy to improve the dietary habits of America's youth should include an oral health component.

A school food service staff member commented that children today face aggressive food marketing in the media and that the recognizable brands that appear in vending machines, school stores, and other various fundraisers undermine the purpose of school meal programs.

#### **4. Potable water requirement (§ 203 of the HFFKA)**

The All Foods NPRM proposed to codify a provision of the HFFKA that requires schools participating in the NSLP to make free, potable water available to children in the place lunches are served during the meal service. Approximately 490 submissions addressed implementation issues related to this aspect of the proposal.<sup>2</sup>

---

<sup>2</sup> For purposes of readability, we have summarized together the two sub-issues under issue 4 of the comment coding structure (4.1 – Implementation methods; 4.2 – Other comments on potable water requirement).

Many commenters, including advocacy organizations, a health care association, a professional association, and a consulting firm, suggested that the final rule should require that free potable water is “readily accessible without restriction” in addition to being “available.” Citing the All Foods NPRM preamble statement that “whatever method is chosen, the water must be available without restriction in the location where meals are served,” some commenters urged that this directive should be reflected in the final regulatory language. These commenters also stated that many schools currently implementing the HHFKA “available” water standard are providing water in ways that do not adequately facilitate student water consumption (e.g., not providing cups, poorly maintained water fountains), and in many cases the facilities can only accommodate a low number of students using the water source. Some advocacy organizations expressed concern that individual water fountains and other single/small-serving water dispensers are insufficient to meet the requirement.

Several commenters provided input regarding whether water should be served from the tap or plastic bottles. A few commenters, including a county government and an individual commenter, said schools should prioritize tap water over bottled water. An individual commenter supported the lack of separate funding for the proposed potable water regulation because this commenter stated that would encourage the use of tap water instead of bottled water, which is important given the negative environmental consequences of plastic bottles and the possibility of negative health consequences of bisphenol-a (BPA) from the plastic. However, this commenter suggested that a small amount of funding should be allocated to purchase non-tap water for those places with a documented lack of access to clean tap water. A county government suggested that water filtration should be added to all water fountains in schools. This commenter also stated that if bottles are necessary to sell water, bottles should be at least 12 ounces in order to prevent plastic waste. Similarly, an individual commenter suggested that purified water be made available through fountains and sinks in order to reduce plastic bottle waste.

Approximately 7,820 submissions addressed other issues related to FNS's implementation of the HHFKA potable water requirement. Many commenters supported the requirement that schools make potable water available to children at no charge during the meal service, and urged FNS to strengthen or expand the requirement. Numerous commenters, including advocacy organizations, a health care association, school districts, two county public health departments, professional associations, consulting firms, a State department of education, academic commenters, and nutrition professionals, urged FNS to expand the proposed requirements to require that free potable water be available to students during breakfast meal service. An advocacy organization asserted that making water available during the breakfast service would be easy to implement in the majority of schools where breakfast and lunch are both served in the cafeteria. However, a professional association recommended that FNS not expand the HHFKA's potable water requirement, which this commenter stated appears to apply only to the lunch meal service. This professional association argued that the variety of school breakfast procedures and locations (e.g., breakfast in the classroom, grab and go, etc.) underscore why the HHFKA did not extend a similar water requirement to the SBP. Also, a school food service staff member commented that offering potable water without charge would potentially be a significant challenge for sites offering breakfast programs, and would impact their labor and food costs.

An advocacy organization and a consulting firm recommended that USDA expand the water requirements to allow water to be served with fresh fruit and/or vegetable garnish. These commenters reasoned that water garnished with fruit is one way to challenge students' perception that tap water tastes bad and to encourage water consumption.

A variety of commenters, including advocacy organizations, school districts, school food service staff members, State departments of education, a food service industry organization, individual commenters, and professional associations, urged USDA not to require schools to make free potable water available to students during afterschool snack service due to the burden that such a requirement would impose to

accommodate the complexity of snack service and service locations. Some of these commenters said the proposed rule goes beyond FNS guidance memo, Memo SPI0-2012ar6 revised January 15, 2013. A professional association commented that extending the water requirement by regulation to the snack service is unnecessary and beyond congressional intent. A school food service staff member expressed concern about the supervision and security of school equipment because outside entities run the afterschool snack programs. Another school food service staff member said a requirement to provide free potable water during afterschool snack service could lead to some districts to discontinue their snack programs due to their inability to adhere to the policy.

Without expressing support or opposition for the requirement for potable water during afterschool snack service, a State department of education commented that afterschool staff would need to be trained and either have access to pitchers and cups, or have a functioning water fountain nearby for children to access. One school food service staff member stated that water requirements for afterschool snacks should be considered met if water is available nearby to the service location rather than directly adjacent to or within the food service location. However, several commenters, including advocacy organizations, a professional association, and health care associations, implied support for applying the free, potable water requirement to afterschool snack service by including it in their proposed revised regulatory language. An advocacy organization, a county public health department, and a school district expressly supported the proposed requirement to make water readily accessible to children at no charge during afterschool snack service. A professional association stated that the availability of water should be encouraged for all meals and snacks but not mandated because there are too many structural and operational components to ensure access to water during service at every campus.

Various commenters, including advocacy organizations, a health care association, a professional association, and a consulting firm, recommended that the water requirements in the final rule should be effective immediately. These commenters and others said FNS should include compliance with the water requirements in the general areas of the State agency administrative review responsibilities.

Several commenters, including advocacy organizations, a State department of public health, a health care association, and a large city department of public health, suggested that USDA provide additional guidance, training, and technical assistance on how to make water readily available with school meals. Some of these commenters stated that analysis and materials developed by the Harvard Prevention Research Center can serve as a starting point for developing key criteria. Many commenters, including advocacy organizations, policy advocacy organizations, a professional association, and a health care association, stated that the process of revising and strengthening guidance should be informed by the feedback and findings from the implementation of this new requirement.

A food service staff member asserted that students tend to select water over milk, which is a good source of vitamin D, with their meals. The commenter argued that it is contradictory to single out vitamin D as a nutrient of concern in the competitive food requirements, but also require schools to serve an item which decreases the consumption of a great source of vitamin D.

## **5. Applicability/scope**

### **5.1 A la carte**

Approximately 100 submissions addressed the applicability of the proposed competitive food standards to a la carte items sold in schools. An advocacy group urged FNS to ensure that all foods meet the proposed standards, including items sold in an a la carte line in cafeterias, because this commenter did not want students to be able to purchase unhealthy foods for lunch every day. A nutrition professional commented that limiting a la carte items to restrictive guidelines would send a message that certain foods are “bad.”

which this commenter stated is not necessarily true for an active child if they are eating nutrient-filled foods as well. A school food service staff commenter stated that having a la carte choices is important for growing and active high school students because it subsidizes the NSLP reimbursable meal, which may not have enough calories for active students.

## **5.2 School stores**

Approximately 40 submissions addressed the applicability of the proposed rule to school stores. A State department of education commented that school stores would need to be monitored closely under the proposed rule because they have a history of providing access to foods that would be prohibited under the proposed competitive food standards. This commenter recommended that USDA provide specific guidance regarding how SFAs should monitor the activities of school stores.

Two student clubs predicted that the proposed competitive food standards would result in a decrease in sales in their student-run school stores because the rule would prohibit the sale of the top selling items. These commenters asserted that such a reduction in sales would reduce the amount of student club members needed to run the store, which the commenter stated would deny those students the opportunity to grow and gain job training in the learning environment that the store offers. These student club commenters stated that the reduction in sales that would result from the competitive foods rule would increase the out-of-pocket costs for students traveling to competitions and other trips that the store is currently subsidizing with the revenue it creates, which would minimize the number of students that are able to participate in such trips. One of the student clubs commented that because their school does not offer any healthy snack options between the end of the school day and the start of after-school programs, the proposed rule would not prevent students from bringing in unhealthy foods purchased off campus. This commenter expressed that it does not believe the proposed competitive food standards are appropriate in a high school setting.

As part of a submission from a class, one student suggested that school stores and concession stands should be subject to the same regulations and implied that a loophole for concession stands would be an unfair application of competitive food standards. Another student commented that school store snacks and beverages should not be restricted because the students run the store.

## **5.3 Snack bars/concession stands**

Approximately 20 submissions addressed the applicability of the proposed competitive food standards to snack bars or concession stands. An individual commenter suggested that competitive food standards should be applicable to concession stands at school athletic events. As part of a submission from a class, one student commented that making exceptions for concessions would destroy competition and create a monopoly.

## **5.4 Vending machines**

Approximately 50 submissions addressed the applicability of the proposed rule to vending machines. A State department of education commented that vending machines would need to be monitored closely under the proposed rule because they are often stocked by multiple organizations in schools. This commenter stated that these different organizations within the school that take ownership for the vending machines would need to be trained on permissible foods under the competitive food standards. This commenter further suggested that school districts may find such training difficult without further guidance on management of vending in schools.

## **5.5 Requirements are only minimum standards**

Approximately 10,280 submissions, including a mass mail campaign, addressed the discretion of States and local school districts to establish more rigorous competitive food standards. Some commenters, including professional associations, and an individual commenter, acknowledged that the HHFKA allows States and local school districts to establish additional or stronger standards for competitive foods, as long as such standards are consistent with the minimum Federal standards. Numerous commenters, including advocacy organizations, a health care association, a State department of education, a State department of health, a trade association, professional associations, a county government, a consulting firm, a school food service staff member, nutrition professionals, and individual commenters, expressly supported FNS's statement that the HHFKA authorizes States and/or local schools to establish their own competitive food standards consistent with the Federal standards. A policy advocacy organization supported its comment in favor of this aspect of the proposal with a legal analysis of the HHFKA using Federal preemption doctrine. Eight advocacy organizations, a professional association, a health care association, and a trade association commented that this aspect of the proposal respects the traditional autonomy of States and local school districts by allowing them to exceed Federal minimum standards to meet specific dietary needs or cultural preferences of the populations they serve. These commenters and another advocacy organization noted that 39 States have laws regulating the sales of competitive foods at schools and that many schools have and will continue to set nutrition guidelines for competitive foods through their Local Wellness Policies. The commenters stated that, if these State regulations and local policies exceed minimum Federal standards, they should remain in place.

One advocacy organization commented that using the federal standards as a "floor" recognizes the capacity for innovation and locally tailored solutions. Similarly, a school food service staff member commented that USDA's competitive food standards should be limited in scope to allow States and LEAs to apply further restrictions at the local level where they can better evaluate their students' and community's needs and concerns. An advocacy organization commented that States and school districts should retain the ability to strengthen and close any loopholes in the final Federal competitive food standards, as well as apply them to foods and beverages sold beyond the end of the school day. This commenter also stated that States and localities would also have the opportunity to set nutrition standards or guidelines for school-sponsored fundraisers, if Federal requirements are not established in the final rule. A professional association stated that State agencies can work through interagency collaborations and with State policy groups to produce strong State policies to limit both the foods sold and the frequency of fundraisers.

Three advocacy organizations commented that this issue was especially important in California, which required implementation of competitive food and beverage standards in 2009, because some aspects of California's requirements are stricter than FNS's proposal and many California school districts have adopted standards more stringent than California's State requirements and FNS's all foods proposal. One advocacy organization stated that California does not want to lose momentum on the strides many school districts have made to assure competitive foods are healthy. A letter submitted by several Colorado advocacy organizations and State and local government entities encouraged USDA to continue to allow for further innovation and action at the state and local level. An individual commenter suggested that USDA collaborate with and support States and individual localities with the implementation of stronger standards, if they so choose.

However, a few commenters, including trade associations and a school food service staff member, expressed concern about additional competitive food restrictions created by States and/or individual school districts. Some urged USDA to adopt uniform, nationwide standards. Another trade association commented that competitive food standards should be as consistent as possible across States and requested that USDA ensure adequate awareness of differing standards by, for example, requiring that

any deviations from USDA's competitive food regulations be posted on USDA's website, organized by city and State, so that industry, schools, school clubs, and parent organizations could easily obtain the information. Trade associations and a school food service staff member expressed concern that allowing States to follow their stricter rules would make implementation of competitive food standards complicated for schools, as they would have to refer to both State and Federal guidelines. One trade association commented that the variation across the country could send an inconsistent message to students and parents about the healthfulness of foods. Another trade association commented that one set of uniform standards would ease implementation for companies that supply food items to schools by facilitating the development of nutritious formulations by manufacturers. Similarly, a school food service staff member stated that having one set of standards would allow manufacturers to produce one product with one set of specifications for the entire country, which could potentially lower the overall cost of the product to the consumer. A trade association expressed concern that treating the proposed standards for competitive foods as a minimum and allowing States and local school districts to set additional standards would undermine the goals of the HHFKA to set cohesive, nationwide standards for food items provided in schools.

#### **5.6 Request for specific exemption of a product from one or more aspects of competitive food requirements**

Approximately 20 submissions included requests for specific exemption of a product from one or more aspect of the competitive food standards. Several commenters, including trade associations, an advocacy organization, and a food industry commenter, recommended that the USDA provide an exemption for sugar-free chewing gum from the competitive food standards. One advocacy organization specifically requested an exemption for sugar-free gum only from the condition that foods contain at least 10% of the Daily Value of a naturally occurring nutrient of public health concern.

A food industry commenter and a trade association stated that such an exemption would be consistent with promoting students' access to healthful dietary options because of the documented oral health care benefits from chewing sugar-free gum. The food industry commenter discussed in great detail public health research that it asserted demonstrates that improving the oral health of Americans is a national priority, as well as what it describes as scientifically-proven findings that chewing sugar-free gum offers oral health benefits by helping to reduce the incidence of tooth decay in children and adults. Further, this commenter and trade associations stated that these findings regarding the oral health benefits of sugar-free gum have been recognized by a number of dental associations globally, including the American Dental Association and the FDI World Dental Association, as well as international authoritative bodies such as the European Food Safety Authority. An advocacy organization and trade associations also cited research they asserted shows the public health benefits of children chewing sugar-free gum. One trade association cited the HHFKA requirement that the Secretary must consider authoritative scientific recommendations for nutrition standards when developing competitive food standards before discussing research it asserted shows the oral health benefits of sugar-free gum.

The food industry commenter and a trade association cited public health research that it asserted indicates that poor oral health can interfere with maximizing a student's full learning potential. Specifically, these commenters stated that more than 51 million school hours are lost each year to dental-related illness and that poor children suffer almost 12 times more restricted-activity days than children from higher-income families, citing a Surgeon General's report on oral health. Moreover, these commenters and others, including another trade association and an advocacy organization, asserted that sugar-free gum is "nutritionally neutral" because it contains on average 5 calories per serving, is absent of fermentable carbohydrates, and is a fat-free, no-sodium product. Another trade association commented that the consumption of sugar-free chewing gum may also be associated with other dietary benefits, citing a study



it asserted indicate that the consumption of non-nutritive sweeteners may be associated with the reduction of body fat gain when used in place of caloric sweeteners in beverages consumed by children.

An advocacy organization commented that given the potential health benefits and lack of nutritional concerns, USDA should not restrict sugar-free gum, but rather should let localities decide whether to allow it for sale. Similarly, a food industry commenter stated that under the proposed rule, States and/or local school districts would still have discretion to establish additional standards (consistent with USDA's minimum standards) governing the sale of sugar-free gum in their schools that respect their unique learning environments. Similarly, other commenters, including a trade association and an advocacy organization, stated that States and/or local school districts would retain the authority to establish more restrictive standards governing the sale of sugar-free gum in their schools should they chose to do so for reasons unrelated to health or nutrition, such as litter.

Two trade associations recommended that USDA exempt Foods for Special Dietary Use (FSDU) from the competitive food standards. These commenters asserted that a number of nutritional formulas are specifically designated as FSDU, including medical foods, which are intended to provide nutrition for children with special nutritional requirements, such as children with metabolic and gastrointestinal disorders, failure to thrive, food allergies, and conditions such as Attention Deficit Hyperactivity Disorder (ADHD). These commenters further stated that many FSDU are also gluten- and lactose-free and, therefore, suitable for children with such dietary restrictions. According to one trade association, FSDU are formulated products that typically provide balanced nutrition, but do not fit in the traditional food categories defined in the proposed rule and may exceed the proposed 200-calorie per serving limit for snacks or the proposed 35% of calories limit for sugars. Another trade association commented that many FSDU are frequently good sources of 15 or more vitamins and minerals, as well as protein and fiber, and may help meet the Daily Values of several nutrients of public health concern. This commenter stated that these qualities are similar to other whole categories of food that are provided exemptions from the standards, such as reduced fat cheeses, flavored and unflavored nonfat and low-fat yogurts, nuts, seeds, and dried fruits. This trade association commented that such an exemption for FSDU would allow for an adequate accommodation necessary for children with special dietary needs and would help the diverse population of students in schools have access to a broader range of nutritious products to meet their highly variable growth and activity needs.

This trade association also urged FNS to exempt low-calorie/no-calorie foods from the competitive food standards. This commenter asserted that allowing low-calorie/no-calorie foods with no nutritive sweeteners, such as sugar-free gelatin products, to be sold in schools would increase the variety of snacks and side dishes offered to students.

The trade association also urged an exemption for soup from the sodium limits for side items that would allow soup to contain up to 480 milligrams (mg) of sodium per labeled serving size. This commenter stated that such an allowance per serving size is consistent with how American Heart Association, Alliance for a Healthier Generation, and HUSSC schools would allow for sodium for soup. This commenter argued that the 200 mg sodium limit proposed for snacks and side items would not allow for palatable soup products that could supply beneficial vegetables, whole grains, and other nutrients to children.

Lastly, exemptions for two snack items were discussed. A food service industry commenter requested an exemption from the sodium standards for high-protein or meat-based products, such as sausages and/or beef jerky. A school district suggested an exemption from the whole grain requirement for popcorn, provided it meets the requirements for calories, fat, saturated fat, and sodium.

## **5.7 Other comments relating to applicability of the proposal**

Approximately 550 submissions included other comments on the applicability or scope of the proposed competitive food standards that did not fall directly into the applicability issue categories above. Many commenters, including school food service staff members, requested that all entities involved with sales of food on school campus be subject to the same regulations, not just SFAs.

Several commenters, including a professional association, school food service staff members, a nutrition professional, an academic commenter, and individual commenters, expressed concern that under the proposed rule, parents and children would still be permitted to supply food for birthday and holiday parties that did not meet competitive food standards. Additionally, some of these commenters expressed concern that teachers would still be permitted to use food that did not meet the standards for lesson plans, rewards, or parties. An individual commenter argued that food should not be used as a reward in school for several reasons, including providing added calories with little nutrition; enabling emotional eating; encouraging the desire for sugary foods and poor eating habits; and undermining the promotion of good eating habits. A State department of education expressed concern about the giving away of foods as part of sales of other items or enticements or rewards for completing other activities. Similarly, a professional association and a school food service staff member commented that if the purpose of competitive food standards is to address obesity, then foods sold, served, and provided in schools should meet the same nutrition standards. An individual commenter suggested that these types of food opportunities send the wrong message about healthy eating. A professional association commented that while these foods are not sold at school, they do compete with the NSLP and SBP, citing studies it asserted show that students who consume snacks during classroom parties or school celebrations are less likely to purchase the nutritionally balanced school meal. This professional association and an academic commenter asserted that the exclusion of parties and celebrations from competitive food regulations undermines the intent of the proposed rule and the efforts of schools to provide healthier foods to students.

A few school food service staff members commented that school affiliated group activities should support educational efforts, rather than school environments serving as the vehicle to sell processed junk foods for food manufacturers and restaurants. For these reasons, these commenters urged FNS to include within the scope of the competitive food standards, foods students bring in their lunches, and foods served at birthday parties, holidays, and other school celebrations. Similarly, an individual commenter urged FNS to apply competitive food standards to foods supplied at holiday and birthday celebrations. Another individual commenter emphasized that competitive food standards should be applied to all foods and beverages sold or distributed in schools. An advocacy organization requested that USDA consider developing a plan to address all foods sold, served, and provided as having to meet nutrition standards, or begin to include criteria for such items as part of the HUSSC certification process. Similarly, a nutrition professional commented that a consistent message should be sent throughout all schools and applied to all activities on the school campus at any time of day. An academic commenter suggested that one potential compromise USDA could consider is allowing classroom parties only in the school's last lunch period. A professional association encouraged USDA to make recommendations that State and local authorities adopt rules that would limit either the number of classroom parties that serve unhealthy snacks and beverages and/or voluntarily extends the Federal competitive food standards to cover classroom parties and school celebrations. This commenter urged USDA to produce and distribute to schools supplemental resources, materials, training, and technical assistance that aims to support schools in this effort and stated that it would be willing to assist with the development and dissemination of such materials.

In contrast, a State department of education supported the fact that the proposed competitive food standards did not cover rewards that teachers offer in a classroom or food brought for classroom parties, and urged that restrictions on those foods should be a local decision. An advocacy organization suggested that competitive food standards should not apply to events for which parents and other adults are a

significant part of an audience or are selling food or beverage items before, during, or after the event, such as a sporting event, a play, or a band/choir concert.

Several commenters, including an advocacy organization, a professional association, a food service industry commenter, and students, recommended that foods made and sold by career centers and culinary arts programs (such as ProStart and Family and Consumer Sciences programs) have a waiver or be exempt from the competitive food standards. These commenters expressed concern regarding the effect the proposed standards may have on culinary skills programs offered in schools. For example, an advocacy organization expressed concern that foods made in these programs would not meet the new standards and, therefore, could not be sold at student-run cafes. An advocacy organization and a food service industry commenter expressed concern that the proposed standards would limit the skills development that is necessary for careers in the food industry because the foods prepared would exceed the proposed standards. However some commenters, including three professional associations, a school district, and a school food service staff member commented that competitive food standards should “level the playing field” between SFAs and other school food sellers, including culinary arts programs. Similarly, a school district commented that there should be no difference between policies applying to NSLP/SBP food service operations and those applying to other areas within the school such as school stores, culinary arts programs, and vending machines. Another school district expressed concern about the lack of guidelines for the growing number of culinary programs in secondary schools. A State department of education commented that the final rule should state whether the competitive food standards apply to culinary arts programs and other food-based education programs in schools, such as Family and Consumer Sciences programs.

An individual commented that individual schools, clubs, and sports are forced to generate funding to meet many important program needs and that it is easy and profitable to sell popular high-fat, high-calorie food items. This commenter stated that these entities need the revenue and are generally less concerned about the nutritional integrity of the items sold. Because this need is large, continuous, and from multiple groups, this commenter stated that competitive food regulations would be difficult for SFAs to monitor. A nutrition professional commented that the competitive food standards would eliminate bake sales using homemade goods because a nutritional analysis would need to be done on each item to ensure that the items for sale meet the nutrition standards. An advocacy organization urged USDA to apply competitive food standards to all fundraising through vending machines, school stores, snack bars, and a la carte sales during the school day. As part of a submission from a class, a student opposed the proposal, stating that competitive foods are not the main food supply and that if people cannot afford those foods, they do not buy them.

A school food service staff member commented that in their school district, which has a student wellness regulation, “black market grills” provide students with high fat, high sodium foods and reduce school lunch participation. Similarly, a State department of education commented that when certain competitive food items are no longer available on school grounds, some entrepreneurial students may obtain and sell these items in school for financial gain.

An advocacy organization requested guidance with regard to how the competitive food requirements would apply to school campuses that serve mixed grade levels. Two school districts suggested that FNS simplify the grade level designations in the competitive food standards to “elementary” and “secondary” schools. These school districts commented that schools with non-traditional grade levels have had difficulty monitoring NSLP standards that vary for differing age groups. One school district suggested that FNS should provide definitions for “elementary” and “secondary” that provide necessary flexibility. The other school district suggested that those terms should be considered as defined by the LEA. This commenter stated that the proposed standards are primarily based on the HUSSC criteria and that while these standards may be acceptable for elementary schools, they are overly restrictive for secondary

schools. Specifically, this commenter stated that of the more than 3,000 schools in Pennsylvania, only 30 meet the HUSSC criteria, and that only 1 of the 30 schools serves high school students (a residential school with only 40 students). School food service staff members, a school district, a nutrition professional, and an individual commenter suggested that USDA exempt all high schools from competitive food standards. A school food service staff member commented that high school students are of age to make choices and the competitive food standards would take away their rights and choices.

A food bank urged USDA to exempt its Backpack and School Pantry Programs from the competitive food standards because it stated that the foods provided to children through those programs are intended to supplement food eaten at home and are not designed to be consumed at school. This commenter stated that the nature of food banking makes it difficult to consistently distribute the same product or product size because most of its food streams depend on charitable contributions, market conditions, crop yields, and other factors beyond its control, which it states is a key distinction from other school-based food programs. However, an individual commented that competitive food standards should apply to all "backpack" programs that distribute food through schools to food-insecure children for consumption on the weekends.

A State juvenile correction facility expressed a need to modify the competitive food standards to fit the needs of Residential Child Care Institutions because currently such facilities are subject to regulations designed to meet the nutritional needs of students who typically have access to foods outside of the school day. This commenter stated that because juveniles only have access to the foods correctional RCCIs provide for them (breakfast, lunch, dinner, and an evening snack), maximum calorie and grain mandates should be waived for institutions that can demonstrate actual population-based nutritional needs, by documenting physical activity and tracking body mass index data for participants.

Two State departments of education commented that FNS should make clear whether all buildings under the jurisdiction of an SFA would have to comply with the competitive food standards, or whether only buildings participating in one or more Child Nutrition (CN) Programs must comply. One State department of education stated this would make a difference for districts in which elementary and middle schools participate, but the high school does not. Another State department of education commented that an SFA may have a legally separate school that is operated under "joint agreement." Similarly, a food service industry commenter sought clarity on whether foods sold by culinary arts programs in career and technical centers would fall under the competitive foods rule, even if the facility did not participate in the NSLP.

Another State department of education requested clarification on whether the competitive food standards would apply to foods sold in school facilities used for community activities during the school day, for example, a preschool, independent Head Start, funerals, blood drives, community education or committee meetings. This commenter suggested that the sale of foods to those attending such activities during the school day would be allowed.

A State department of education expressed concern with food trucks selling unhealthy items to students in close proximity to school grounds. As part of a submission from a class, a student asked why the bans on certain foods do not extend to convenience stores or supermarkets.

A State Governor urged FNS to keep in mind when finalizing the competitive foods rule the diversity of American's diets throughout the United States, as they can vary regionally based on the climate and crops grown. A professional association similarly urged FNS to consider the diversity of school programs and the desirability of maintaining participation in the NSLP and SBP.

Other comments made regarding the applicability of the competitive food requirements include:

- An individual commenter suggested that USDA consider creating financial burden floors to ensure that schools are not so adversely affected by the competitive food standards that a school would be forced to cut educational programming to adhere to the new standards.
- An individual commented that due to “the disabilities act” [sic], all entities providing competitive foods cannot sell or serve food products on school campuses during the school day that places students with severe allergies at risk.
- A trade association stated that the framing of the proposal in the USDA press release is confusing because it implied that competitive foods and beverages sold in schools are considered “snacks” and not meals.

## **6. Definitions**

### **6.1. Comments on definition of “competitive foods”**

The All Foods NPRM proposed to define “competitive food” to mean “all food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 available for sale to students on the school campus during the school day” (proposed 7 CFR 210.11(a)(1)). Approximately 5,690 submissions provided input on this proposed definition.

Numerous commenters, including advocacy organizations, professional associations, health care associations, individual commenters, trade associations, academic commenters, a school district, the food service industry, State government agencies, and school food service staff members, generally agreed with the proposed definition for “competitive food.” More specifically, several commenters, including advocacy organizations, nutrition professionals, professional associations, individual commenters, and academic commenters, stated that the standards should apply to all snacks and beverages sold in schools, across the school campus, and throughout the school day (up through 30 minutes after school ends).

Some commenters, including several professional associations, a school district, and a county public health department, said FNS should clarify the proposed definition of “competitive food” to prevent distribution of foods that do not meet the competitive foods standards to students free of charge. Specifically, these commenters suggested that FNS modify the proposed definition to replace the term “available for sale” with “made available,” “offered,” or “distributed, served, or sold.” A school district and county public health department commented that the proposed definition includes a loophole that could result in the use of food as an incentive to encourage students to purchase items (e.g., buy a school spirit t-shirt and receive a free donut). The county public health department stated that revising the definition to close this loophole would require that foods offered for good performance in school meet the competitive foods nutrition standards.

A school food service company supported the proposed definition of “competitive food” and commented that other school departments selling food and beverages in competition with the school food service often results in reduced revenue for the school food service, which could potentially require the support of the district’s general fund and compromise the integrity of educational programs. A professional association requested that FNS define the areas and the times during the school day where fundraisers or competitive foods are sold, and urged that it not be allowed in areas where reimbursable meals are sold or consumed, or in elementary or middle schools.

A State department of education urged FNS to simplify the definition of competitive foods by using the statement currently used in 7 CFR part 210.

## **6.2. Comments on definition of “school campus”**

The All Foods NPRM proposed to define “school campus,” for the purpose of competitive food standards implementation, to mean “all areas of the property under the jurisdiction of the school that are accessible to students during the school day” (proposed 7 CFR 210.11(a)(3)). Approximately 2,980 submissions provided input on this proposed definition.

Many commenters, including some advocacy organizations, professional associations, health care associations, trade associations, individual commenters, school food service staff members, a State department of education, and school districts, generally agreed with the proposed definition for “school campus.” Several of these commenters asserted that the HHFKA intended the standards to apply to the full school setting and to include venues serving foods and beverages outside the food service area. These commenters also stated that, currently, 90% of U.S. schools have a closed-campus policy, and only 30% of high schools have an open-campus policy that allows students to leave during the lunch hour.

A trade association urged USDA to modify the definition of “school campus” to specifically exclude teachers’ lounges and similar areas restricted to faculty and staff. A State department of education recommended that community and non-school activities that occur on a school campus should not be required to follow the competitive food rules even though they are in a school facility adjacent to or in same physical structure where classes are in session. This commenter asserted that small schools often have a shared facility used for multiple school and community activities.

A few commenters provided input on the treatment of school buses under the proposed rule. A State department of education stated that a USDA webinar defines a school bus as part of the school campus. This commenter suggested that USDA should give State agencies the discretion to allow once-a-year special events, such as the school bus driver providing ice cream on the last day of school. A school food service staff member commented that a school cannot monitor the buses prior to students’ arrival to school grounds and suggested that FNS define “school campus” as the actual school grounds.

## **6.3. Comments on definition of “school day”**

The All Foods NPRM proposed to define “school day,” for the purpose of competitive food standards implementation, to mean “the period from the midnight before, to 30 minutes after the end of the official school day” (proposed § 210.11(a)(2)). Approximately 6,310 submissions provided input on this proposed definition. Of these submissions, approximately 30 mentioned the applicability of the proposed standard to non-school hours.<sup>3</sup> Many commenters, including some advocacy organizations, professional associations, health care associations, professional associations, industry associations, an academic commenter, and individual commenters, State government agencies, school food service staff, and school districts, generally agreed with the proposed definition for “school day.”

Numerous commenters stated that the proposed definition of “school day” should be more expansive to cover the period of time children are transitioning off campus and to allow afterschool programs serving USDA foods and beverages to start without competition from unregulated competitive food. Many

---

<sup>3</sup> For purposes of readability, we have summarized together issue 6.3 (Comments on definition of “school day”) and issue 6.3.1 (Proposed standards would not apply to non-school hours) of the issue outline because the subject matter was considerably similar.

commenters, including advocacy organizations, individual commenters, school districts, health care associations, trade associations, and professional associations, suggested that the competitive food requirements should apply to field trips, afterschool programs, events, and activities directed at students, such as club meetings and practices for sports, drama, and band. Several of these commenters asserted that many schools across the country have already implemented nutrition standards for foods and beverages to the extended school day through the Alliance for a Healthier Generation's Healthy Schools Program. These commenters stated that those standards apply to the extended school day when events are primarily under the control of the school or third parties on behalf of the school, such as when clubs, bands, sports practices, and afterschool programs occur. One advocacy organization suggested that FNS use language from the competitive food rule in Oregon to define the timing of applicability of the Federal competitive food requirements.

Some commenters, including advocacy organizations, professional associations, and individual commenters, recommended that the definition of school day should be extended to a full hour after the end of the official school day. A State department of education and an advocacy organization suggested that the definition should be extended until 30 minutes after the final Federally reimbursable meal or snack is served on a school campus. A health care professional suggested that the school day encompass the entire 24-hour period or 30 minutes after the end of any school-sanctioned activities. A large city government recommended that FNS define the end of "school day" as 6 p.m.

However, some commenters implied that the proposed definition of "school day" is too broad. Individual commenters, school food service staff members, students, a professional association, and a State government agency suggested that the definition of school day should not extend past the normal school day. A few commenters, including professional associations, individual commenters, and academia, recommended that a school day should be defined to start 30 minutes before the official school day. A school food service staff member suggested that the school day begin with the school bell.

A few commenters requested additional clarification on the proposed definition. A professional association and an advocacy organization recommended FNS clarify that the competitive food and beverage requirements would remain in force for the full official school day, regardless of length, including extensions of the day for learning. A State department of education asked how the rule would apply when a sporting event is not concluded by midnight.

A school district and an individual commenter suggested that the definition of "school day" should account for early release days that do not include time for students to have lunch. These commenters stated that, under the proposed definition, early release days would be an opportunity for Parent Teacher Associations (PTAs) to set up "Pizza Wednesdays" or "Taco Tuesdays."

#### **6.4. Comments on definition of "entree item"**

The All Foods NPRM proposed to define "entree item" as an item that is either: (1) A combination food of meat or meat alternate and whole grain-rich/bread; or (2) A combination food of vegetable or fruit and meat or meat alternate; or (3) A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters (proposed 7 CFR 210.11(k)(1)). Approximately 850 submissions provided input on this proposed definition.

Several commenters, including trade associations, food manufacturers, and individual commenters, urged FNS to amend the definition of entrée to allow grain only, whole-grain rich entrees, which these commenters stated are commonly served entrée items in the SBP. Several commenters, including a professional association, a trade association, a school food service staff member, and individual commenters, recommended that FNS define "breakfast entrée," with a school food service staff member

suggesting that this definition be consistent with the types of entrees served under the SBP. A professional association, a trade association, school food service staff members, and individual commenters urged FNS to use, “as example of breakfast entrées, items that include 2 components, e.g., 2-ounce equivalents of grains, or 1-ounce equivalent of grain plus a 1-ounce equivalent of protein.” A trade association commented that, under the proposed rule, if a breakfast item does not qualify for the definition of entrée item, it would be restricted to the proposed 200-calorie limit for snack items, which falls well below the minimum calorie requirements for breakfast under the SBP. A food manufacturer asserted that because there is no requirement for meat or meat alternates in the SBP, many of the entrée items served in the breakfast program would not meet the entrée definition in the All Foods NPRM. Another food manufacturer requested FNS clarify how the requirements apply to both bulk items which are served in multiples (e.g., pancakes, waffles, French toast, and French toast sticks) and to packaged items that have a defined content. An individual commenter stated that programs need the flexibility to determine bread and grain components for a breakfast.

A health care association and an advocacy organization recommended that USDA require a proportionate increase in, and/or recommended amounts of, food group contributions for entree-type items. These commenters recommended that entrée items be required to meet all of the competitive food nutrient standards and include at least two different food groups (except in the case of meats or meat alternates). One of these commenters provided specific language to define an allowable entrée-type item.

A trade association requested that FNS clarify that the definition of entrée would not include side items purchased at the same time by students, and that the nutritional content of these items would be considered individually based on the standards for snack items. This commenter argued that schools should not be required to ensure that any conceivable combination of side items that would meet the proposed definition of entrée meets the competitive food nutrition standards for entrées.

A few advocacy organizations recommended that USDA amend the definition of entree items to exclude meat snack items (e.g., beef jerky).

## **6.5. Recommended definitions and other comments relating to definitions**

Approximately 630 submissions provided other comments on definitions in the competitive food regulations, many suggesting new definitions that FNS should include. For example, several commenters, including an advocacy organization, a student, and an individual commenter, said FNS should define “meal service.” The advocacy organization and the individual commenter suggested that “meal service” should be defined as 30 minutes before breakfast service begins through 30 minutes after the last lunch service ends.

A State department of education and a school district suggested that the phrase “per portion as packaged” needs clarification because there is a difference between a “portion” and a “serving.” The school district stated that per portion as packaged means the entire packaged of food sold, not a serving within the package.

A trade association, a food manufacturer, and a school district asked USDA to clarify what constitutes a side dish and a snack. In particular, the school district urged that side dishes be better defined and recommended that fruit and vegetable sides be considered in this side dish category. Further, the food manufacturer commented that, under the proposed rule, it is not clear whether soup is an entrée or side dish. The trade association urged definitions that would allow for a broad spectrum of developed and as-yet-to-be developed food products to ensure that foods will meet children’s expectations and will meet nutrient standards. This commenter asked USDA to provide guidance on how to make a determination on which category a food item might fall in (entrée vs. side dish/snack item).



A State department of education urged FNS to clarify the intended differences between SFA and LEA because this commenter stated that the term SFA seems to be changing, including its use in USDA regulation and policy. Another State department of education suggested that FNS use one term that refers broadly to the school, such as LEA, when referring to the responsibility to meet all competitive food requirements, including areas that are within the jurisdiction of the school food service department. This commenter stated that proposed rule's differentiation of responsibility between the SFA and the LEA implies that they are separate entities and that SFA refers only to the school food service.

A school district said the definition of "combination foods" should be eliminated because training team members on the proposed definition would pose significant challenges. An individual commenter recommended that combination foods as defined in § 201.11(a)(4) should stand and FNS should eliminate the definition in § 201.11 (c)(2)(v) because this commenter stated there are no combination foods that meet the definition of § 210.11(a)(4) that would not meet the food requirement criteria in § 210.11(c)(2)(ii) or (iii).

A State department of education said FNS should define "dairy product" (as used in § 210.11(c)(2)(iii)) because "dairy" in the DGA is not clearly defined, and may be different than what is considered the definition within the NSLP/SBPs. An individual commenter also suggested that dairy needs to be defined, and suggested that the definition could be "a dairy product needs to be the most prominent ingredient in the food."

A State office of education commented that FNS should define "accompaniment." A school food service staff member suggested that FNS should define "leftovers," stating that schools need to be able to serve leftovers for more than one day. A State department of education recommended that FNS define the term "seafood" and clarify that freshwater fish is included in the definition.

A trade association commented that FNS should add to the proposed definition of "whole-grain rich product" a requirement that the food contain at least 8 grams of whole grain per serving, based on minimum serving sizes specified for grains and breads in FNS guidance. This commenter also asked FNS to define whole-grain rich foods in a manner consistent with the definition under the FNS grains guidance. Similarly, a food manufacturer and individual commenters stated that the definitions in the competitive food requirements, especially for whole-grain foods, should mirror what is the standard for the HHFKA and the NSLP.

A State department of education commented that the proposed rule refers to elementary, middle and high school students, but that those terms were not defined by grade. This commenter suggested that USDA align these terms with the new grade groups identified with the NLSP/SBP meal pattern requirements: K-5, 6-8 and 9-12. An individual commented that FNS should consider simplifying grade level designations to "elementary" and "secondary" and provide definitions for each that provide necessary flexibility.

Some commenters asked for clarification of terms related to fundraisers. Several commenters, including a professional association, a school district, school food service staff members, and individual commenters, requested a definition of "school sponsored fundraiser." These commenters stated that there are fundraiser events that are held on school property that are not "school sponsored," and therefore may not be subject to the rule. Some commenters, including school food service staff members, individual commenters, and a school district, asked that FNS provide a definition for allowed fundraiser "frequency," with some of these commenters saying the definition should require an official approval of fundraisers by a school authority as part of a local wellness policy. An individual commenter suggested that FNS define "infrequent" as once per month.

## **7. Food requirements**

### **7.1. General support**

Approximately 209,400 submissions, including mass mail campaigns, expressed general support for the food requirements in the proposed rule. Many commenters stated that the proposed food requirements would require that all foods in schools provide students a positive nutritional benefit, such as be a fruit, vegetable, or whole grain, or naturally contain 10% of the Daily Value of a nutrient of public health concern (i.e., calcium, potassium, vitamin D, or dietary fiber). Several commenters including, a State department of education, local and municipal governments, health care professionals or associations, school districts, advocacy organizations, individual commenters, and trade associations, commented that they approved of the food-based approach used in the proposed rule. These commenters asserted that the food-based approach is consistent with the DGA and the IOM Nutrition Standards for Foods in Schools report which these commenters stated advocated for meeting nutrient needs through a diet rich in nutrient-dense foods and foods in their whole natural state. A number of these commenters also stated that selling competitive foods which contain important food groups and naturally occurring key nutrients is as affordable as selling less healthful competitive foods which provide higher levels of saturated fat, added sugars, and/or sodium.

Some individual commenters suggested that fruits, vegetables, and whole grain products should be encouraged under the rule rather than processed foods that meet the requirements. These commenters argued that processed foods that meet the requirements are not as healthy as natural, whole foods and should be discouraged.

### **7.2. General opposition**

Approximately 20 submissions expressed general opposition to the proposed food requirements in the All Foods NPRM. A few students and a school food service staff member indicated that the food restrictions would limit both the types of food students prefer to eat and the quantity. Another food service staff member suggested that portion limits for foods may be a better option for regulating competitive foods because it would allow some foods that children like, such as baked chips, to remain eligible for sale in schools but in a portion that is small enough to limit negative nutrients.

A trade association urged USDA to reconsider the food requirements criteria of the proposed rule, arguing that because none of the already established voluntary programs have such requirements (e.g., Alliance for a Healthier Generation, HUSSC, IOM, and various State programs) it is likely that the transition to a more restrictive competitive foods policy would have negative impacts. This commenter argued that many manufacturers have already invested significant amounts of money to reformulate to comply with voluntary competitive food standards adopted by schools, and that the proposed requirement to be a fruit, vegetable, dairy, protein, whole-grain rich, combination food or provide 10% Daily Value of a nutrient of public health concern would make it difficult for many products to qualify.

A trade association commented that the food requirements should be eliminated because the rule as proposed would severely limit what products can be sold because many food items would not fit in one of the food groups despite meeting nutrient requirements. Similarly, a few school food service staff members commented that the nutrition limit approach (for calories, sodium, fat, and sugar) was a preferable way to implement snack restrictions, and that there was no need for additional food requirements criteria. One school food service staff member stated that aligning the nutrition standards for snacks with those of reimbursable meals would more naturally cause more healthy snacks to be served without the need for additional restrictive food criteria.

An advocacy organization suggested simplification of the proposed food requirement criteria because current food packaging and nutrition information would make it impossible for non-nutrition professionals to implement the rule outside of school meals. This commenter suggested that compliance would be more likely if the food requirement criteria were simplified to the following language:

- The first ingredient (or second ingredient if water is the first) must be one of the food groups (grain, fruit, vegetable, dairy, protein); or
- Grain products need to be 50% or more whole grains by weight, or contain 10% of the Daily Value of a nutrient of public health concern; and
- A packaged snack item may be sold only in a single-serving size.

**7.3. Requirement to be a “whole-grain rich” grain product (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 (fruit, vegetable, dairy product, protein food)**

**7.3.1. Support “whole-grain rich” grain product requirement**

Approximately 25 submissions expressed support for the proposed standard that a “whole-grain rich” grain product must be either 50% or more whole grains by weight or have whole grains as the first ingredient. Several commenters, including advocacy organizations and health care professionals or associations, stated that the proposed “whole-grain rich” standard would align with the DGA as well as with the NSLP standards. Some commenters, including advocacy organizations, commented that current consumption of whole grains is not meeting recommended levels for school-aged children.

A few commenters, including advocacy organizations and health care associations, argued against the suggestion that the whole grain-rich standard should allow grain products that contain at least 8 grams of whole grain in a serving, and commented that the grain product standard should be exclusively defined as containing at least 50% whole grain. These commenters asserted that such an approach would not ensure that grain products contain at least 50% whole grain and would be inconsistent with the DGA. As an example, some of these commenters stated that a certain breakfast cereal contains 17 grams of whole grain and 16 grams of sugars per 55 gram serving, which would leave up to 22 grams of refined grains per serving (assuming other ingredients are minor). Therefore, these commenters concluded that a child consuming such a cereal for breakfast would get more refined grain than whole grain from this cereal that would be permitted if the “whole grain rich” standard included an allowance for products that contained at least 8 grams of whole grain per serving.

**7.3.2. “Whole-grain rich” grain product requirement should be more stringent**

Approximately 40 submissions supported making the proposed “whole-grain rich” grain product standard more stringent. Several individual commenters suggested that 100% of grains should be whole grain, not “whole-grain rich.” These commenters stated that refined grains should not be offered in school, and that the proposed “whole-grain rich” standard would allow some refined grains. Specifically, some of these commenters asserted that allowing refined grains would not contribute to improving children’s health because refined grains do not have the same healthful attributes as whole grains.

**7.3.3. “Whole-grain rich” grain product requirement should be less stringent**

Approximately 980 submissions supported making the proposed “whole-grain rich” grain product standard less stringent. Several commenters, including a food manufacturer, a trade association, a State department of education, a school district, a nutrition professional, and individual commenters, stated that

the DGA and IOM recommendations for grains suggest that half of grains be from whole grains. A State department of education, a professional association, food manufacturers, and a school district suggested that the competitive food grain product standard should be consistent with this recommendation. Some of these commenters stated that enriched grains make a positive contribution to the diet and can also make products more acceptable to students. A trade association, school food service staff members, and a State department of education commented that the competitive food requirement for whole-grain rich grain products may deter children from choosing those food items because they do not like the taste of whole grains or foods that contain whole grains. Further, a nutrition professional expressed concern that FNS is encouraging consumption of 100% whole grains because there is no FDA requirement that whole grains be fortified with folate or folic acid, like there is for refined grains. An individual commenter expressed concern about finding products that meet the “whole-grain rich” standard.

Numerous commenters, including food manufacturers, State departments of education, trade associations, a school food service company, a school district, and school food service staff members, suggested that the “whole-grain rich” grain product standard in the competitive food regulations should be aligned with the definitions in the NSLP/SBP to simplify school menus, offer flexibility, reduce confusion, and increase compatibility with the NSLP/SBP. Many commenters, including a professional association, a trade association, a State department of education, an individual commenter, and school food service staff members, argued that because food items often appear on both the reimbursable meal menu and the a la carte menu, the competitive food and NSLP/SBP standards should be consistent.

Some commenters, including trade associations, food manufacturers, a school district, a county public health department, school food service staff members, nutrition professionals, and individual commenters, suggested that FNS expand the whole-grain rich grain product standard to allow products that contain at least 8 grams of whole grains per serving, based on minimum serving sizes in the FNS guidance. Similarly, several commenters, including professional associations, a food manufacturer, an industry association, a vending company owner, a State department of education, a nutrition professional, individual commenters, and school food service staff members, recommended that FNS modify the competitive food grain product standard to be consistent with the current guidance provided in Memo SP10-2012ar6 Revised January 25, 2013, which stated that the whole grains per serving must be greater than or equal to 8 grams.

A State department of education suggested that 75% of the grain products offered in school should be whole-grain rich, rather than 100%, to alleviate acceptability issues in schools. A school food service staff member recommended that FNS eliminate the “whole-grain rich” grain product standard entirely.

A State department of education and a food manufacturer commented that in the final rule for the NSLP and SBP a product is accepted as whole-grain rich if it includes an FDA-approved whole grain health claim on its packaging. These commenters argued that the acceptance of FDA-approved health claims in the NSLP and SBP should be extended to competitive foods. Similarly, an individual commenter suggested that the grain product standard should include a requirement that items have the whole grains council stamp.

A food industry commenter suggested that USDA extend the applicability of the guidance memoranda SP 02-2013 regarding “Corn Masa (Dough) for Use in Tortilla Chips, Taco Shells, and Tamales” to competitive foods.

#### **7.3.4. Comments on non-grain food groups**

Approximately three submissions addressed non-grain food groups. A school food service company commented that the proposed rule was unclear how a food service operator would assess whether a food

item qualifies as a main food group. For example, this commenter asked how much of a food group or particular food item must contain to qualify. This commenter requested clarification on how to assess whether a food constitutes a main food group from readily available information.

A trade association and a professional association suggested that the list of non-grain main food groups in 7 CFR § 210.11(c)(2)(iii) expressly include soyfoods. Specifically, these commenters suggested that USDA revise the regulatory language to include “non-dairy options such as soymilk and soymilk products” after “dairy product,” and add to the parenthetical list of protein foods “soybeans, soy protein, tofu, soy nuts.” These commenters argued that because these types of soyfoods provide high quality protein with a complete essential amino acid profile and are included in the NSLP/SBP, they should be permissible competitive food options.

### **7.3.5. Other**

Approximately 350 submissions commented on other aspects of the “whole-grain rich” grain product standard or food group criteria in the proposed competitive food requirements. Some commenters, including an advocacy organization and a trade association, expressed general support for the proposed food requirements that competitive foods should contain at least one of the major food groups identified in the DGA.

Several commenters, including trade associations, a school district, food manufacturers, school food service staff members, and an individual commenter, expressed concerns that the All Foods NPRM included a different standard for whole grains than used in the NSLP/SBP, and requested that they be consistent. Similarly, some commenters, including a professional association, a county public health department, an individual commenter, and a nutrition professional, suggested that the grain product standard for competitive foods should be consistent with the current guidance for whole-grain rich products. A school district suggested that the standards for fruits, vegetables, and grains should align with those already in place for the NSLP and SBP because food are often sold as part of a reimbursable meal and as a la carte, and students and servers would have a difficult time with conflicting standards. A food manufacturer asserted that uniformity in definitions and standards in the NSLP/SBP and competitive food regulations would help to promote a message to parents and students that school foods are healthy, nutritious options. One State department of education commented that while the proposed rule is consistent with NSLP/SBP requirement that all grain items must be at least 51% whole grain, it does not mention whether the remaining grain content must be enriched, as required in the NSLP/SBP.

Several commenters, including advocacy organizations, a school district, a county public health department, and a health care association, suggested that USDA should work with the FDA to require and implement whole grain labeling. Some commenters, including health care associations, advocacy organizations, and a county public health department, argued that making labeling more clear and straightforward would facilitate implementation of the whole grain requirements in schools and minimize the burden of calculating whole grain content in products that are inadequately labeled.

A State government agency and a large city government expressed concern that the proposed whole-grain rich grain product standard would be difficult to assess because current nutrition labels do not identify whole grain amounts in the format envisioned by the proposed rule. A State government agency requested that, because FNS did not provide simplified instructions on how to calculate whole grain percentages, the whole grain standard correspond to information found in current food labels. For example, an academic commenter suggested that all allowable grain products should list whole grain as the first ingredient. A large city government suggested the whole grain standards take the form of a minimum fiber requirement (stated in grams), rather than a percent of whole grains, which this commenter asserted would make the standard easier to understand and implement for all relevant parties.

An advocacy organization encouraged USDA to clarify that schools should focus on offering naturally-occurring fiber-rich whole grains because many of the benefits are associated with the fiber content of whole grain food. Some commenters expressed concern and requested clarification regarding how certain food items would be categorized. For example, a nutrition professional asked whether packaged items that have whole corn or dried potatoes as their first ingredients would be categorized as whole grains or vegetables. A State department of education and a school district questioned how popcorn would be treated because it is a whole grain. The school district suggested that popcorn should be exempt from the whole-grain rich grain product standard if it meets other requirements for calories, fat, saturated fat, and sodium.

**7.4. Requirement to contain 10% of the Daily Value of a “naturally occurring” nutrient cited as a public health concern in the DGA (calcium, potassium, vitamin D, or fiber)**

**7.4.1. Support restriction to only “naturally occurring” nutrients**

Approximately 450 submissions expressed support for the proposed restriction to only “naturally occurring” nutrients. Numerous commenters, including advocacy organizations, health care associations, State government agencies, two county public health departments, a consulting firm, and an industry association, stated that the IOM report and the 2010 DGA recommend that foods be consumed as close as possible to their whole, natural state. Some of these commenters said that fruits, vegetables, and other whole foods have nutrient densities that are difficult to replicate through processes such as fortification. A nutrition professional commented that naturally occurring vitamins and minerals are better absorbed by the body than supplemented vitamins and minerals. Several commenters, including State government agencies, advocacy organizations, school food service staff members, individual commenters, and a teacher, expressed concern that if the competitive food requirements permitted fortification, unhealthy or less healthy foods would be fortified and made available in schools.

Many commenters, including advocacy organizations and health care associations, stated that FDA has recognized that fortification could result in over- or under-fortification in consumer diets and create imbalances in the food supply. Advocacy organizations and health care associations also commented that nutrients added to foods, such as vitamin D, might be over-consumed if many food manufacturers add nutrients to snack foods through fortification.

Some advocacy organizations commented that isolated fibers (e.g., maltodextrin, inulin, polydextrose, chicory root, cellulose, oat fiber, soy fiber) have no well-established health benefits. Some of these commenters and a health care association also argued that given the various factors to be considered for responsible fortification (as outlined in the FDA's policy), it would be burdensome to expect school food service operators and others to determine which snack foods are appropriately fortified and which are not, and USDA's proposed requirement to allow only naturally occurring nutrients is a more straight forward approach. These commenters further asserted that requiring schools to sell competitive foods that contain naturally occurring nutrients is financially feasible, citing research studies.

Several commenters, including advocacy organizations, a professional association, and a consulting firm, recommended that the competitive food regulations provide the current nutrients of concern as examples, but specify that the nutrients of concern be based on the most recent version of the DGA. Another advocacy organization recommended that the list of nutrients of public health concern should be updated in accordance with the DGA, but not expanded for any other reason.

A State department of education and two school districts supported requiring that nutrients of concern be naturally occurring, but expressed concern that this would be difficult to determine because of the absence

of such information on the nutrition label. A professional association supported the proposed requirement that nutrients of concern must be naturally occurring, but commented that it would support fortification if labeling included information on fortification so that decisions concerning use of fortified items could be made. Two advocacy organizations suggested that USDA work with FDA as it revised the Nutrition Facts label to ensure that all nutrients of public health concern are listed on the label. These commenters also stated that food manufacturers should be encouraged to provide information about the products that meet, or do not meet, the standard of 10% naturally occurring nutrients of concern.

Advocacy organizations, a health care association, and two State departments of education commented that school food service staff would require training in order to identify which food items contain naturally-occurring nutrients of concern or those which have been fortified. Some of these commenters suggested that guidance include examples of products that are naturally good sources of calcium, potassium, and fiber, as well as how to determine whether a nutrient has been added by reviewing the ingredient list (including key words to look for that are likely sources of added nutrients).

A State department of education recommended that USDA clarify that a product containing a food ingredient with a naturally occurring nutrient does not meet the standard for 10% of a naturally occurring nutrient of concern. For example, this commenter suggested that if milk, which contains calcium, is added as an ingredient in biscuits, the biscuit should not qualify as a competitive food because it does not naturally contain calcium.

#### **7.4.2. Oppose restriction to only “naturally occurring” nutrients (e.g., fortified nutrients should be allowed)**

Approximately 1,240 submissions opposed the proposed restriction to only “naturally occurring” nutrients. Several commenters, including a food manufacturer, trade associations, school food service staff members, a school district, a professional association, an advocacy organization, a food service company, and a State department of education, argued that allowing competitive foods to qualify because of fortified nutrients would provide greater flexibility in menu planning and increase the variety of items that schools can offer as competitive foods. An industry association asserted fortification allows increased product nutrient content without any effect on taste or palatability. An advocacy organization commented that it might be difficult to have an array of foods that appeal to a variety of children's preferences and pocketbooks that contain the proposed amount of specific food groups or 10% Daily Value of naturally occurring nutrients of concern.

Some commenters, including an industry association, an advocacy organization, and food industry commenters, cited studies that they asserted show that fortified food products contribute to Americans achieving their target goals for micronutrients and avoiding nutrient deficiencies. Some of these commenters and other trade associations asserted that most foods do not contain significant levels of naturally occurring vitamin D. An industry organization commented that because many children are lactose intolerant, it is important that they have alternative means of achieving sufficient intakes of calcium and vitamin D. Another trade association and a food manufacturer commented that the proposed naturally occurring nutrient requirement would exclude many foods because foods such as milk, soy milk, and grains have been fortified. A trade association and a food manufacturer cited studies that they asserted illustrate the acceptance of added fibers in helping meet fiber intake needs.

Many commenters, including a professional association, a school district, a food manufacturer, a food service company, individual commenters, and school food service staff members, argued that fortification has long been recognized a good way to help people get access to important nutrients, and that adding vitamins and nutrients to food should be encouraged rather than discouraged. Some commenters, including a trade association, stated that the proposed restriction to only naturally occurring nutrients

would make it more difficult for children to get those nutrients in their diets. A number of commenters, including trade associations, a food manufacturer, and an individual commenter, asserted that the body can absorb and effectively utilize both naturally occurring nutrients and those added by fortification. Citing the World Health Organization's Guidelines on Food Fortification with Micronutrients, a food manufacturer stated that the bioavailability of some nutrients used in fortification may be superior to those naturally occurring in foods. An individual commenter and a school food service staff member commented that some children receive their entire nutritional intake from the foods they consume in schools because they do not have access to nutritious foods at home. Because of this, these commenters argued that schools should have the ability to provide as much of the necessary nutrients as possible to students in foods sold in schools including through fortified foods.

Several commenters, including State departments of education, professional associations, food manufacturers, trade associations, school food service staff members, school districts, individual commenters, an advocacy organization, a school food service company, and nutrition professionals, stated that the current nutrition information on food labels does not distinguish between fortified and naturally occurring nutrients, and that there is no standardized labeling for nutrients of concern. These commenters argued that the requirement for nutrients should be aligned to the information that is currently present on food nutrition labels. These commenters concluded that it would be challenging or impossible for food service staff to determine from food labels what nutrients are naturally-occurring and which are added through fortification. A nutrition professional requested guidance on how SFAs would determine if a product contains 10% of the Daily Value of calcium, potassium, vitamin D, and fiber when potassium and vitamin D are not listed on the food label.

Some commenters, including professional associations, food manufacturers, a State department of education, a trade association, school districts, individual commenters, and school food services staff members, argued that there is not a similar requirement for naturally occurring nutrients in the NSLP/SBP reimbursable meal program, nor in the HUSSC criteria. Some trade associations and a food manufacturer asserted that allowing nutrient-fortified foods would be consistent with the 2010 DGA. A trade association commented that although the DGA recognize the benefit of consuming whole foods, they also explicitly recognize the benefits of fortification.

A food manufacturer commented that food providers have recently reformulated products in order to comply with requirements of the reimbursable meals rule and that in some cases such reformulated foods would not be allowed under the proposed competitive food requirements because they contain added nutrients that were necessary for compliance with the reimbursable foods rule. This commenter argued that because so many foods are offered in schools as both competitive and reimbursable foods, requiring that products again be changed to comply with the naturally-occurring nutrient requirement would be costly for food providers.

A food manufacturer, a trade association, and an individual commented that some food items require supplementation under other laws in order to be packaged and sold. For example, one food manufacturer stated that low-fat ice cream requires the addition of vitamin A in order to meet legal requirements. An advocacy organization and a food manufacturer commented that the FDA's Fortification Policy would ensure that any fortification would be appropriate.

A food manufacturer urged USDA to broaden the list of nutrients of concern to include vitamins A and C, and iron, referencing the FDA definition of "healthy" (21 CFR 101.65(d)(2)) and the current Nutrition Facts panel. Another food manufacturer and a school food service company suggested that the requirement for a food to provide 10% of daily value of nutrient of concern as listed in the 2010 DGA should be relaxed to 5% to reflect the current standard in the FMNV regulation.



A trade association and a food industry commenter expressed support for the use of fortification, but in the event that the final rule does not include fortification, this commenter requested that USDA clarify that required or appropriate use of enrichment can be used to meet the nutritional guidelines developed for NSLP/SBP.

#### **7.4.3. Other**

Approximately 110 submissions provided other comments about the proposed restriction to only “naturally occurring” nutrients. For example, a State department of education and a school food service company commented that the determination of 10% Daily Value is problematic because software would need the appropriate functionality to make this calculation in a recipe, yet such functionality is not currently a requirement of USDA approved nutrition analysis software.

Food manufacturers, a trade association, and an individual argued that the nutrients of concern listed in the competitive food regulations should be expanded to include vitamins A and C, iron, and folic acid in order to improve children's intake of additional key vitamins and nutrients that may be lacking in their diet. The individual commented that such nutrients would be consistent with the NSLP and the HUSSC. Another individual commenter urged FNS to expand the list of nutrients of public health concern to include protein and commented that protein is commonly recorded on labels. A food manufacturer recommended that the list of nutrients of concern should be expanded to include all nutrients that have been indicated as shortfalls for children, including vitamins A, C, D, and E, phosphorus, magnesium, calcium, potassium, and fiber. In contrast, advocacy organizations commented that there is no need, nor any basis, to expand the list of nutrients to include ones that are not of public health concern, and that doing so would dilute the focus on food groups and nutrients to encourage as identified in the DGA. A school food service staff member recommended the elimination of potassium and vitamin D as nutrients of concern because the amount of these nutrients in food may be impossible to ascertain. An advocacy organization suggested that FNS further define naturally occurring ingredients so they are in line with the Recommended Daily Intakes.

A State department of agriculture and an individual commenter recommended that naturally occurring nutrients of public health concern should not be a factor in considering what food items should be allowed in schools because allowing foods that meet a minimum nutrient level would be inconsistent with the goal of transitioning to school food standards based on specified healthy foods rather than nutrient content. Similarly, an individual commented that competitive food requirements should be more concerned about ingredients in the food rather than if they supply some percentage of Daily Value of nutrients. A State department of education also expressed concern with the 10% Daily Value requirement, commenting that it did not necessarily guarantee a healthy food. A State department of education recommended that FNS remove the option for a competitive food to have 10% Daily Value of a naturally occurring nutrient because it would be unduly burdensome to monitor.

A food manufacturer requested clarification that the 10% Daily Value requirement applies only to food items that do not qualify for inclusion as a competitive food by falling into one of the other food group categories (dairy, grain, meat, etc.). Similarly, an academic commenter stated that the proposed rule made it seem like nothing fortified could be sold by stating that only food items with naturally occurring nutrients would be permitted. A food manufacturer requested clarification if a product contains 10% of a naturally occurring nutrient such as calcium from cheese, could that same product also contain fortification such as inulin and whether inulin from chicory was considered a naturally occurring nutrient (fiber). This commenter further requested clarification on the status of whey, whey protein concentrate, milk protein concentrate, and other further processed dairy ingredients. This commenter suggested that calcium phosphate is a naturally occurring and critically functional part of milk protein, so it should be considered a naturally occurring nutrient in dairy products.

Numerous commenters, including a trade association, school food service staff members, school districts, State departments of education, nutrition professionals, a school food service company, a vending company owner, an advocacy organization, a professional association, and individual commenters, discussed the issues with labeling and verification of nutrients in foods. For example, a school district commented that it would be difficult for schools to determine what nutrients are included (naturally or fortified) because labels are not standardized to indicate those ingredients. A nutrition professional requested clarification and guidance on how SFAs would make these calculations. A school food service staff member, a nutrition professional, and individuals commented that vitamin D and potassium content is not listed on standard food labels and that there is no way to tell if these nutrients are naturally occurring or present because of fortification. An individual commenter asserted that distinguishing naturally occurring versus fortified nutrients would be a burden on food service staff. This commenter recommended that USDA require companies to adequately label and make distinct foods that have been fortified. A professional association recommended the FNS remove any nutrient requirements and standards from the competitive food requirements that could not be readily determined from food labels.

## **7.5. Requirement to be a combination food that contains at least ¼ cup of fruit or vegetable**

### **7.5.1. Support**

Two submissions expressed support for the proposed competitive food criteria that a combination food must contain at least ¼ cup of fruit or vegetable. A trade association commented that USDA's requirement that combination foods contain at least ¼ cup of fruit or vegetable reflects the emphasis on foods to encourage in the IOM report and the DGA emphasis that all children need to eat more fruits and vegetables. This commenter stated that while the USDA requirement is not as strong as the IOM recommendation it would still increase children's overall access to and consumption of fruits and vegetables. Two advocacy organizations expressed support for the proposed definition of "combination foods."

### **7.5.2. Fruit/veg requirement for combination food should be more stringent**

No comments addressed this issue.

### **7.5.3. Fruit/veg requirement for combination food should be less stringent**

Approximately 1,130 submissions commented that the requirements for fruit and vegetable content in combination foods should be less stringent. Many commenters, including a food manufacturer, school food service staff members, professional associations, school districts, a trade association, and individual commenters, suggested that the minimum requirement for fruits and vegetables in combination foods should be reduced from 1/4 cup to 1/8 cup. These commenters reasoned that because the standard for fruit or vegetable content in combination foods under the NSLP, SBP, and afterschool snack programs is 1/8 cup, this should also be the standard under the competitive food requirements. These commenters stated that this change would create consistency between programs and facilitate implementation of the competitive foods requirements.

Some school food service staff members commented that the focus on fruits and vegetables is excessive and that other food groups also provide valuable nutrition, such as grains, dairy, and lean proteins and are just as important as fruits and vegetables. These commenters encouraged USDA to drop the requirement for fruits and vegetables in combination foods. Some of these comments also stated that finding products that meet the requirement to include ¼ cup of fruit or vegetable would be difficult from a price standpoint.

#### **7.5.4. Other**

Approximately 20 submissions provided other comments on the fruit and vegetable requirements for combination foods under the competitive foods proposed rule. A few commenters, including State departments of education and advocacy organizations, requested clarification on the definition of combination foods and entrée items. A State department of education commented that under the proposed regulations an entrée item could contain a meat or meat alternative and a whole grain, but that such an entrée would not be acceptable under the definition of a combination food because it does not contain  $\frac{1}{4}$  cup of fruit or vegetable. This commenter suggested that exempt foods that are included as part of combination foods should also be allowed and should be counted as satisfying the combination food requirement. Similarly, a number of commenters, including a State department of education, a school food service company, a nutrition professional, and an individual commenter, suggested that clarification and possible exemptions are needed regarding the status of foods such as peanut butter crackers and peanut butter and jelly sandwich that are combination foods but do not fit into the current classification in the competitive foods proposed rule.

A school food service company asserted that it would not be possible for a food service operator to determine whether a combination food includes the required  $\frac{1}{4}$  cup of fruit or vegetable without a CN label. A school district commented that it is not possible to easily determine whether a food contains  $\frac{1}{4}$  cup of fruit or vegetables because most food labels do not contain information in ounces or cups. Another school district recommended that FNS eliminate the definition of combination foods because it would not be necessary if calorie, saturated fat, trans fat, sodium, and sugar standards are met. Additionally, this commenter stated that training staff on the definition of combination foods would present significant challenges. A trade association and a food manufacturer recommended allowing combination foods that supply at least half a serving of enriched grain products to count as eligible competitive foods if appropriate nutrition standards are met.

#### **7.6. Where water is the first ingredient listed, the second ingredient must be one of the above (comments on this aspect of the proposal)**

Approximately seven submissions commented on the proposed requirement that in cases where water is the first ingredient listed the second ingredient must be one of the food groups. A number of commenters, including advocacy organizations, suggested a technical correction to this section of the proposed rule. These commenters stated that the language regarding water as the first ingredient in the proposed rule should apply to the standards including food groups, but should not apply to the provision related to nutrients. These commenters asserted that the first ingredient should not be considered to determine the nutrient content. A nutrition professional requested that the final rule clarify whether “one of the above” means a fruit, vegetable, dairy product, protein food, or grain.

#### **7.7. Other comments on proposed food requirements**

Approximately 260 submissions addressed the proposed food requirements in ways other than those discussed above. Generally, these comments focused on specific language changes, proposed consistency with existing school food standards (NSLP/SBP requirements), or suggestions for how to treat categories of food products. For example, an advocacy organization and an individual commenter recommended that FNS include as one of the “general nutrition standards for competitive foods” a criterion that all foods sold must provide a positive nutritional benefit to students. A State department of education asked FNS to clarify what would constitute a “protein food” and how much protein in relationship to other items does it need to contain to be considered a protein food.

Several advocacy organizations suggested that USDA require entrée items to meet all the nutrient standards, and include at least two different food groups (except in the case of meats or meat alternates). These commenters recommended specific portions for each different food group contribution. As explained by these organizations, entrée items that are combination foods should be required to contain multiple food groups because they are expected to be the main component of a meal and, therefore, should contribute more to dietary needs.

Several commenters, including an advocacy organization, a consulting firm, individual commenters, school food service staff members, and school districts, suggested that the competitive foods proposed rule should align more closely with the NSLP and SBP. A school food service staff member added that the minimum competitive food requirements should also be flexible and easy for districts to implement.

Some commenters, including, an industry association, an academic commenter, and individual commenters argued that schools should strongly encourage vegetarian meals, fruit and vegetable options, and fish. On the other hand, an individual commenter argued against the promotion of dairy products as part of the food requirements under the competitive foods proposed rule.

A few commenters, including an advocacy organization, commented that USDA should clarify specific exemptions as well as the language of the proposed rule. One advocacy organization urged FNS to consider no exemptions for competitive food standards.

A State department of education and a school district expressed concern that the proposed food requirements would eliminate items such as baked chips, which are a healthier alternative to regular chips. This school district suggested instead limiting the size of items to be sold, which it stated would limit the calories but would be more realistic regarding foods eaten by middle and high school students. Similarly, a trade association, a school district, and a school food service staff member commented that a greater variety of snacks in high schools is appropriate given the increased independence of these students. These commenters recommended that USDA adopt food requirements that vary by grade, similar to the proposed competitive beverage requirements.

An academic commenter suggested that FNS require fresh fruits and non-fried vegetables to be sold at all locations where food is sold (except in non-refrigerated or beverage only vending machines). An individual commented that the organization of listing the five competitive food criteria in 7 CFR 210.11(c)(2) some ending with "or," and others with "and" is unnecessarily confusing and awkward. This commenter suggested an alternative phrasing of the criteria.

#### **7.8. Suggestions to prohibit foods with artificial colors, flavors, and/or preservatives**

Approximately 50 submissions made suggestions that foods with artificial colors, flavors, and/or preservatives should be prohibited. In general, these comments cited health concerns associated with artificial food additives and a desire to make foods healthier for children. Several commenters, including school food service staff members, individual commenters, an advocacy organization, and a county public health department, argued that artificial ingredients including artificial sweeteners should not be an acceptable part of competitive school foods because of negative health consequences associated with the consumption of such ingredients including adverse behaviors in some susceptible children with ADHD. These commenters also asserted that artificial ingredients are most commonly found in processed foods and are often used as replacements for nutritious ingredients. Processed foods are a category which the competitive foods proposed rule would attempt to minimize. One State department of education suggested that excessive fortification and nutrient supplements such as amino acids, extracts, herbs, or other botanicals should also be prohibited in the competitive foods standards. This commenter asserted a

lack of scientific evidence that children need such dietary supplements and they should therefore be prohibited.

## **8. Nutrient standards**

### **8.1. General support**

Approximately 206,790 submissions, including mass mail campaigns, expressed support for the proposed nutrient standards for competitive foods without discussing a specific element of the nutrient standards. Many commenters generally expressed support for nutrient standards being criteria by which competitive foods are judged. Additionally, several commenters expressed general support for the nutrient standards as they were proposed.

### **8.2. General opposition**

Approximately 1,050 submissions expressed general opposition to the proposed nutrient standards for competitive foods without discussing a specific element of the nutrient standards. Many commenters expressed opposition, reasoning that the proposed nutrient standards are inconsistent with the standards for the USDA school meal programs (NSLP/SBP). Additionally, a few commenters, including a food manufacturer, questioned the appropriateness of applying the nutrient standards to a single item of food rather than to overall diet measured over a period of time. A school food service staff member expressed opposition to the proposed nutrient standards, reasoning that guidelines based on food groupings would be easier.

### **8.3. Proposed exemption: fruits and vegetables (fresh, frozen, or canned) are exempt from all nutrient standards if they have no added ingredients except water or, in the case of fruit, packed in 100% juice or extra light syrup**

#### **8.3.1 Support**

Approximately 17 submissions expressed support for the exemption from the nutrient standards for fresh, frozen, or canned fruits and vegetables as it was proposed. Several commenters, including trade associations and a State department of education, expressed general support for the exemption without further discussing a specific element of the exemption. A trade association expressed support for the proposed exemption based on consistency with both DGA and IOM recommendations.

#### **8.3.2 Proposed exemption should be more stringent**

Approximately seven submissions expressed support for a more stringent exemption for fruits and vegetables from the nutrient standards than proposed. A few commenters, including an academic commenter, a large city government, and a teacher, stated that fruits packed in syrup of any kind should not be exempted from the nutrient standards.

#### **8.3.3 Proposed exemption should be less stringent**

Approximately 920 submissions suggested some sort of expansion of the proposed exemption from the nutrient standards for fruits and vegetables. Many commenters, including school food service staff members, professional associations, school districts, State departments of education, individual commenters, and a trade association, expressed support for a revised exemption of fruits and vegetables from the nutrient standards that would ensure consistency between the school meal programs and the competitive foods program. Specific areas of inconsistency identified include an exemption for dried

fruits and canned fruits packed in light syrup. A few commenters, including trade associations, recommended that USDA either expand the exemption from the nutrient standards to cover frozen fruits with added nutritive sweeteners or provide, as it did for the school meal programs, additional time for industry to reformulate and to pack new frozen fruit products that do not contain added sugars. An advocacy organization and a health care association requested an exemption from the nutrient standards for certain canned vegetables for which a small amount of sugars has been added to maintain the structural integrity of the vegetable, consistent with USDA guidance for WIC program food packages.

Without citing an inconsistency with the school meal programs, several commenters requested an expansion of the proposed exemption from the nutrient standards to apply to canned fruits packed in light syrup. A few commenters, including advocacy organizations, and school food service staff member, requested an expansion for fruits packed in light syrup reasoning that an expanded exemption would make it easier for schools and companies to offer a wider range of fruit options that students would eat and enjoy.

Similarly, without citing an inconsistency with the school meal programs, several commenters requested an expansion of the exemption from the nutrient standards to apply to dried fruits with or without added sugars. Trade associations and a food manufacturer requested an expansion for dried fruits to ensure consistency with DGA and IOM recommendations. An association representing farmer cooperatives across the country commented that the exemption should be expanded to include dried fruits without added sugars because such products have been incorrectly excluded for being more caloric than their fresh counterparts. This commenter stated that this was an inaccurate characterization of dried fruits because although the drying process concentrates natural sugar, the high caloric density of dried fruit is naturalized by smaller serving sizes. Specific types of dried fruit for which an exemption was requested includes raisins and dates.

More generally, a food manufacturer recommended that the proposed fruit and vegetable exemption from the nutrient standards be revised by removing the proposed “with no added ingredients” language from the exemption. Among other reasons, this commenter argued that some added ingredients are needed for fruits and vegetables for preservation, taste, texture, and nutrition. Finally, a trade association recommended that the exemption from the nutrient standards be expanded to cover all fruits, including those packed in heavy syrup, because children are currently consuming significantly fewer servings of fruits than are recommended.

#### **8.3.4 Comments on sugar content of vegetables and fruit**

Approximately 60 submissions addressed the sugar content of vegetables or fruits as it relates to the proposed exemption from the nutrient standards. Several commenters, including advocacy organizations and health care associations, stated that certain food items, like kidney beans or sweet peas, require small amounts of nutritive sweeteners to maintain the structural integrity of the food, consistent with USDA guidance for WIC food packages. A few other commenters, including , a school food service staff member, a school district, and individual commenters stated that FNS Memo SP20-2012 indicated that the USDA currently adds sugars to USDA foods and that the memo indicated that SFAs were allowed to continue to serve frozen fruit with added sugars under the NSLP/SBP. Similarly, a couple trade associations commented that there was no reason to distinguish between frozen fruits with added sugar and canned fruits with added sugar. One of these trade associations went on to describe what they characterized as the important purpose served by added sugars in many frozen fruit products. Specifically, this commenter asserted that sugars serve as an osmotic regulator to maintain the quality of the fruit, especially in the thawed product. In addition, this trade association stated that the use of sugars when packing frozen fruits allows processors to pre-slice fruits or to place them into single-serving containers without compromising quality.

A food manufacturer commented that the 2010 DGA specified that the best use of calories from added sweeteners is to increase the palatability of nutrient dense foods, like fruit.

### **8.3.5 Other comment about general exemptions from nutrient standards**

Approximately nine submissions provided other comments about general exemptions from the nutrient standards. Several commenters, including school food service staff members, school districts, and a member of the food service industry, encouraged FNS to ensure consistency with other USDA programs. A trade association recommended that USDA try to not differentiate between dried, canned, frozen, or fresh fruits and vegetables when finalizing the exemptions from the nutrient standards. A State department of education encouraged USDA to ensure that manufacturers were given enough time to reformulate their products to comply with the proposed exemptions from the nutrient standards.

## **8.4. Total fat ( $\leq$ 35% of calories)**

### **8.4.1 Support**

Approximately 3,060 submissions expressed general support for the proposed competitive food restriction on total fat, which specifies that no more than 35% of total calories per portion as packaged be derived from fat. Many commenters, including advocacy organizations, health care associations, a school district, and a trade association, stated that the proposed limit is consistent with the DGA and that such a restriction is associated with a reduced risk of various chronic diseases while still providing for adequate intake of essential nutrients. A few commenters, including, school food service staff members, an advocacy organization, and an individual commenter expressed support for the total fat restriction reasoning that the proposed limits are consistent with the NSLP standards. A few other commenters, including a State department of education and advocacy organizations, supported the total fat standard reasoning that the proposed limit is in line with recommendations from the IOM. An advocacy organization also stated that the proposed limit is consistent with the American Cancer Society Guidelines.

### **8.4.2 Total fat limit should be more stringent**

Two submissions were opposed to the proposed restriction on total fat, arguing in favor of making the restriction more stringent. These individual commenters stated a general opinion that the total fat limit should be more stringent without providing a specific alternative.

### **8.4.3 Total fat limit should be less stringent**

Approximately 130 submissions were opposed to the proposed restriction on total fat, arguing in favor of either making the restriction less stringent or eliminating the standard entirely. Many of the commenters, including school districts, individual commenters, school food service staff members, food industry associations, and a professional association, recommended revising the proposed rule to eliminate the total fat restriction and to include standards for saturated fat and total calories only. Several of these commenters argued that such a revision would ensure consistency with other USDA programs, which would in turn ease the burden on school food service staff and help to keep costs low. Furthermore, these commenters stated that saturated fat and calorie restrictions would keep portion sizes appropriate and would help to maintain the nutritional integrity of foods sold at schools.

A few commenters, including an advocacy organization, school food service staff members, and an individual commenter, also recommended that the restriction on total fat be eliminated, reasoning that

reliance on saturated fat and trans fat limitations would be sufficient. An individual commenter recommended that the restriction apply to “hazardous fats” only, including trans fats, but should not restrict dietary fat, which this commenter said helps to achieve satiability, control hunger, and raise an individual’s metabolic rate.

Several commenters, including school food service staff members, school districts, a State department of education, and a food manufacturer, expressed opposition to the proposed restriction on total fat questioning the appropriateness of applying the standard to a single item of food rather than to overall diet measured over a period of time. In support of this argument, a school food service staff member and an individual commenter asserted that the DGA focuses on nutrient intake over a period of time rather than from individual food items. A State department of education stated that if it is necessary to have a total fat standard applied to individual food items, then the limit should be revised to 40-45% of total calories from total fat per portion.

A few commenters, including a trade association and a professional association, recommended a less restrictive total fat standard. The professional association expressed concern that the proposed fat limit for competitive foods would exclude ice cream, cookies, bagged snacks, popcorn, and soups. The trade association stated that the proposed standard sends an unhealthy message to students that they cannot have an occasional treat and maintain a healthy lifestyle. Furthermore, this commenter asserted that the proposed total fat standard is unrealistic and would not prepare children for the choices they will make as adults. This commenter went on to recommend that the proposed rule be revised to allow a higher total fat limit and to give discretion to the State or local district.

#### **8.4.4 Exemptions from total fat limit**

##### **8.4.4.1 Nuts, seeds, nut/seed butters**

Approximately 60 submissions provided input on the proposed exemption from the total fat standard for nuts, seeds, and nut/seed butters. Most commenters, including advocacy organizations, health care associations, and an individual commenter, expressed support for the nut, seed, and nut/seed butter exemption from the total fat standard. A food industry company and an association representing farmer cooperatives across the country provided a description of the nutritional value of nuts, seeds, and nut/seed butters to explain their support for this exemption. Similarly, a non-profit organization provided substantial detail on the nutritional benefits of peanuts to explain their support for the exemption. Several individual commenters suggested that the exemption should apply to only those nuts, seeds, and nut/seed butters that do not contain added fats or sugars. A trade association requested that soy products, including soy nuts, soy nut butter, and edamame, be exempt from the total fat standard. Without explicitly requesting an expansion of the exemption, a non-profit organization recommended that trail mixes be considered a healthy snack option when the proportion of peanuts to other ingredients is high.

A few commenters raised issues related to nuts, seeds, and nut/seed butters as combination foods. A trade association asked FNS to clarify whether the nut, seed, and nut/seed butter exemption from the total fat standard would apply both to the individual food product (e.g., a peanut) and the individual food product when it is used as an ingredient in a combination food (e.g., peanut butter in a peanut and jelly sandwich). Furthermore, this commenter asked whether the fat content of the exempted ingredient would be included in the calculated total fat of the multi-ingredient food item. A State department of education requested that the exemption be expanded to cover combination foods including nut/seed butters.

Another State department of education asked how USDA planned to account for the difference between naturally occurring fat found in prepackaged nuts and seeds and added fats, which the commenter alleged to be included in the majority of prepackaged nuts and seeds.



#### **8.4.4.2 Products that consist only of dried fruit with nuts and/or seeds with no added nutritive sweetener or fat**

Approximately 15 submissions provided input on the proposed exemption from the total fat standard for products that consist only of dried fruit with nuts and/or seeds with no added nutritive sweetener or fat. Most of these commenters, including general advocacy organizations, health care associations, and a trade association, expressed support for this exemption from the total fat standard. Additionally, most of these commenters specified that the exemption should apply to the total fat standard only and that products consisting only of dried fruit and nuts and/or seeds with no added nutritive sweetener or fat should still be subject to the other nutrient standards.

Additionally, a food manufacturer requested an expansion of the exemption to cover dried fruits mixed with nuts and/or seeds even if the dried fruit contained sugars that had been added as a result of dehydration or processing operations.

#### **8.4.4.3 Seafood with no added fat**

Approximately 45 submissions provided input on the proposed exemption from the total fat standard for seafood with no added fat. Most of these commenters, including advocacy organizations and a trade association, expressed support for this exemption from the total fat standard. Many of these commenters suggested that the exemption should apply only to the total fat standard and that seafood with no added fat should still be subject to the other nutrient standards. A trade association in support of the seafood exemption provided a detailed description of the health benefits associated with seafood. Additionally, this trade association commented that the 2010 DGA distinguished seafood from other proteins as a food to increase due to its unique nutrient package of lean protein, B vitamins, and essential omega-3s.

In contrast, citing concerns regarding the environmental sustainability of seafood and the potential for high levels of heavy metals within seafood, a few individual commenters expressed opposition to the proposed seafood exemption from the total fat standard.

A State department of education sought clarification on the definition of the term “seafood,” asking, as an example of the potential confusion, whether freshwater fish is included.

#### **8.4.4.4 Reduced fat cheese**

Approximately 100 submissions provided input on the proposed exemption from the total fat standard for reduced fat cheese. Many commenters, including advocacy organizations, health care associations, and an association representing farmer cooperatives across the country, expressed support for this exemption from the total fat standard. Many commenters in support of the exemption asserted that the exemption is consistent with the DGA and would likely limit the consumption of full fat cheeses that may be high in saturated fats. A school district expressed support for the proposed reduced fat cheese exemption from the total fat standard reasoning that it would be consistent with the NSLP. A non-profit organization commented that the exemption for “reduced fat” cheese, as opposed to “low fat” cheese, was appropriate because of the current availability of reduced fat cheese on the market, while limited amounts of low fat cheese are currently available. However, many of the commenters in support of this general exemption for reduced fat cheese urged USDA to not extend the exemption to combination products that include reduced fat cheese (e.g., cheese and crackers).

Numerous commenters, including school food service staff members, trade associations, individual commenters, Federal U.S. Senators, State Congressmen, a State Governor, a State department of

education, a food manufacturer, and a vending company owner, urged USDA to expand the reduced fat cheese exemption to include all kinds of cheeses. The most common reason given for requesting this expansion was the importance of increasing children's access to dairy products. Many of these commenters also stated that the cheese items would still be subject to calorie restrictions, which they reasoned would help to control portion sizes.

A few commenters, including trade associations and a food manufacturer, requested that if USDA was unwilling to expand the reduced fat cheese exemption to all cheeses, then, at a minimum, the exemption should be revised to specify that "part skim cheese (mozzarella)" is covered by the exemption. A trade association and a food manufacturer requested that in addition to "part skim cheese (mozzarella)," the expansion of the exemption also include "light cheese (50% reduced fat cheese)" at a minimum. These commenters reasoned that inclusion of these specific forms of cheese would be consistent with the Alliance for Healthier Generation guidelines. Similarly, a trade association and a professional association requested that the exemption be revised to specify that soy cheese was also exempt from the total fat standard. Both commenters explained the request by stating that although soyfoods can be high in fat, soyfoods contain mostly unsaturated, "good" fats.

A non-profit organization asked USDA to clarify which cheeses would qualify as reduced fat and therefore be subject to an exemption from the total fat standard. This commenter went on to recommend that a list be provided to schools to ease the implementation burden for this exemption and that additional guidance on the qualification criteria for reduced fat be provided to industry to aid in the development of new cheese options.

However, arguing that reduced fat cheeses are actually high in fat, several individual commenters expressed opposition to the proposed reduced fat cheese exemption from the total fat standard.

#### **8.4.4.5 Other comments relating to exemptions from total fat limit**

Approximately 15 submissions provided other comments relating to exemptions from the total fat limit. Several commenters described specific types of food that they recommended should be exempt from the total fat standard. A trade association and a professional association recommended that soyfoods be exempt from the total fat standard. Both commenters reasoned that although soyfoods generally have a fat content close to or exceeding the proposed total fat limit, the fats contained in soyfoods are mostly unsaturated, "good" fats. The professional association went on to request that USDA make it clear that fluid milk substitutions should be exempt when the fat composition of the drink is predominantly unsaturated fatty acids. A State department of education and a school food service staff member requested an exemption from the total fat standard for eggs. A food manufacturer more generally requested that USDA consider an exemption for protein foods that supply at least 10% of the recommended daily value for protein. This commenter reasoned that, without such an exemption, many protein foods could not be sold alone without being diluted with sugars and refined grains, which the commenter argued is not the intent of the competitive foods nutrition standards.

A State department of education recommended that, similar to California's competitive food requirements, USDA should exempt legumes and legume butters from the total fat standard. A food manufacturer proposed that USDA consider an exemption from the total fat standard for combination foods that contain a significant amount of nuts, seeds, nut butters, seafood, and reduced fat cheeses to be consistent with voluntary standards. Without providing a rationale, a school food service staff member recommended that all low-fat dairy products be exempt from the total fat standard.

#### **8.4.5 Other comments on total fat limit**

Approximately 20 submissions provided other comments relating to the total fat limit. A few commenters identified potential implementation difficulties and/or recommended alternatives that could potentially lessen the burden of implementing the total fat standard. A State department of education and a large city government commented that the percent of calories coming from total fat is not required to be included on Nutrition Facts labels, which both commenters suggested would make the implementation of the total fat limit challenging for SFAs. The State department of education recommended that USDA consider revising the proposed rule to address only nutrient criteria available on nutrition information labels. The large city government commented that setting the nutrition requirements for total fat as a gram limit, similar to the approach taken by New York City, rather than as a percent of calories, is an alternative approach that USDA should consider. An academic commenter recommended that competitive foods should not contain more than 35% of energy from total fats and should be fat free (with exemptions for 1-ounce servings of nuts, nut butters, seeds, and reduced fat cheese).

Additionally, a few individual commenters requested that the rule differentiate between good fats and bad fats. One individual commenter recommended increasing the proportion of healthy fats consumed in schools, including the consumption of “avocado, unrefined virgin coconut oil, unrefined extra virgin olive oil, and 100% truganic raw dairy foods from local healthy pastured dairy herds.”

A school food service staff member commented that the proposed total fat limit for competitive foods would exclude “ice cream, cookies, bagged snacks, soups, second entrees, and healthy option entrees” as an option for sale at schools. This commenter expressed dissatisfaction with this result of the proposed rule, reasoning that healthy versions of these food items can be made available.

### **8.5. Saturated fat ( $\leq 10\%$ of calories)**

#### **8.5.1 Support**

Approximately 2,630 submissions expressed general support for a restriction on saturated fat for competitive foods sold in schools. Many commenters indicated that they generally support restricting saturated fats in competitive foods sold in schools, but did not comment on the specific limit proposed. Many commenters, including advocacy organizations, health care associations, trade associations, and a school district, stated that the proposed saturated fat limit is consistent with the DGA and is associated with a reduced risk of various chronic diseases while still providing for adequate intake of essential nutrients. A few commenters, including a school food service staff member and an individual commenter, expressed support for the proposed saturated fat restriction reasoning that the proposed limit is consistent with the NSLP standards. An advocacy organization expressed support for the saturated fat standard reasoning that the proposed limit is supported by recommendations from the IOM. A food industry commenter explained that it supported the proposed restriction on saturated fat because “increased intakes of saturated fat contribute to increased incidence of heart disease” and establishing heart healthy eating habits in children is critical to promoting lifelong heart health.

Additionally, many commenters, including school food service staff members, school districts, professional associations, a trade association, a State department of education, a citizen, a food manufacturer, and a vending company owner, expressed their support for restricting saturated fats, as opposed to total fats, to be consistent with other USDA programs. A professional association explained its argument for consistency by saying that this consistency across programs would ease the burden on school food service programs and keep costs low.

In addition to expressing support for the proposed saturated fat restriction, a school district and a county public health department both encouraged USDA to continually update the requirements to reflect new DGA recommendations.

### **8.5.2 Saturated fat limit should be more stringent**

Two submissions recommended that the proposed saturated fat limit should be more stringent. An advocacy organization urged USDA to revise the saturated fat limit to require competitive foods to have less than 7% of total calories from saturated fat. This commenter stated that although USDA's proposed standard is consistent with the 2010 DGA, the 2010 Dietary Guidelines Advisory Committee found that 10% is too high for heart health. The commenter further stated that the 2010 Dietary Guidelines Advisory Committee found that limiting consumption of saturated fats results in a meaningful reduction of risk for cardiovascular disease and type 2 diabetes. An individual commenter suggested that no saturated fat might be appropriate.

### **8.5.3 Saturated fat limit should be less stringent**

Approximately 70 submissions were opposed to the proposed restriction on saturated fat, arguing in favor of either making the proposed restriction less stringent or eliminating the standard entirely. A few commenters, including a school district, a school food service staff member, an individual commenter, and a food manufacturer, expressed opposition to the proposed restriction on saturated fat, questioning the appropriateness of applying the standard to a single item of food rather than to overall diet measured over a period of time. A food manufacturer recommended eliminating the saturated fat standard and relying on the proposed calorie standards to limit the sale of competitive foods in schools. This commenter argued that there was a lack of scientific evidence substantiating the proposed approach of limiting saturated fat content to 10% of a food item's calories. Additionally, an individual commenter recommended that the restriction apply to "hazardous fats" only, including trans fats, but should not restrict dietary fat, which helps to achieve satiability, control hunger, and raise an individual's metabolic rate. This commenter asserted that after 50 years of aggressive research, data shows that fat consumption, including consumption of saturated fats, is not associated with cardiovascular disease mortality or events.

### **8.5.4 Exemptions from saturated fat limit**

#### **8.5.4.1 Reduced fat cheese**

Approximately 400 submissions provided input on the proposed exemption from the saturated fat standard for reduced fat cheese. Many commenters expressed support for this exemption from the saturated fat standard. Of those expressing support, many commented that the exemption was consistent with the DGA and would likely limit consumption of full fat cheeses that may be high in saturated fats. However, many of the commenters in support of this proposed exemption for reduced fat cheese from the saturated fat limit, including advocacy organizations and health care associations, urged USDA to not extend the exemption to combination products that include reduced fat cheese (e.g., cheese and crackers). A school district expressed support for the reduced fat cheese exemption from the saturated fat standard reasoning that it would be consistent with the NSLP.

Several commenters, including trade associations, school food service staff members, Federal U.S. Senators, State Congressman, a State Governor, a professional association, a food manufacturer and individual commenters, urged USDA to expand the reduced fat cheese exemption to include all kinds of cheeses. Many of these commenters argued that the cheese items would still be subject to calorie restrictions, which they reasoned would help to control portion sizes. A few commenters based their request for this expansion on the importance of increasing children's access to dairy products. A trade

association and a food manufacturer requested that if USDA was unwilling to expand the reduced fat cheese exemption to all cheeses, then, at a minimum, the exemption should be revised to specify that “part skim cheese (mozzarella)” and “light cheese (50% reduced fat cheese)” are covered by the exemption. These commenters reasoned that inclusion of these specific forms of cheeses would be consistent with the Alliance for a Healthier Generation guidelines.

However, an advocacy organization expressed concern over the multiple proposed exceptions for dairy products, including the exemption from the saturated fat standard for reduced fat cheeses, hypothesizing that these exceptions are simply concessions to appease dairy lobbyists, rather than decisions based on concern for children's health.

A few commenters sought clarification on issues associated with the proposed exemption for reduced fat cheese. A trade association asked that FNS clarify whether the reduced fat cheese exemption from the saturated fat standard applied both to the individual food product (e.g., a cheese cube) and the individual food product when it is used as an ingredient (e.g., the cheese on a pizza). Furthermore, this commenter asked whether the saturated fat content of the exempted ingredient would be included in the saturated fat content of the multi-ingredient food item. A school food service staff member went further, asking FNS to clarify that a combination food (e.g., cheese breadsticks), including reduced fat cheese, would qualify for the exemption from the saturated fat limit because it includes an exempted item.

#### **8.5.4.2 Other comments relating to exemptions from saturated fat limit**

Approximately 20 submissions provided other comments relating to exemptions from the saturated fat limit. Several commenters described specific types of food that they recommended should be exempt from the saturated fat standard. Several commenters, including advocacy organizations, health care associations, and a trade association, recommended that the proposed exemption for nuts and nut butters from the total fat limit be expanded to exempt these items from the saturated fat standard as well. Most of the commenters in support of exempting nuts and nut butters from the saturated fat limit reasoned that these foods have healthy fat profiles and positive nutritional benefits. Additionally, these commenters specified that the exemption for these products should apply only to the total fat and saturated fat standard and that nuts and nut butters should still be subject to the other nutrient standards. A trade association asserted that this exemption would allow nuts, seeds, and nut/seed butters to act as a meat/meat alternate as is done in the reimbursable school meals program. A State department of education requested that the proposed exemptions from the saturated fat standard be revised to include exemptions for specific nuts and nut butters: peanuts, peanut butter, cashews, and cashew butter.

This State department of education and a food service staff member requested an exemption from the saturated fat standard for eggs. A food manufacturer more generally requested that USDA consider an exemption from the saturated fat limit for protein foods that supply at least 10% daily value for protein. This commenter reasoned that without such an exemption, many protein foods could not be sold alone without being diluted with sugars and refined grains, which the commenter argued is not the intent of the competitive foods nutrition standards. Another food manufacturer proposed that USDA consider an exemption from the saturated fat standard for combination foods that contain a significant amount of nuts, seeds, nut butters, seafood, and reduced fat cheeses, to be consistent with voluntary standards.

A school food service staff member proposed that the foods exempted from the saturated fat standard be revised to mirror the exemptions from the total fat standard, and a different school food service staff member recommended that the saturated fat standard be revised to mirror the meal pattern requirements. Without providing a rationale, a school food service staff member recommended that all low-fat dairy products be exempt from the saturated fat limit for competitive foods.

### **8.5.5. Other comments on saturated fat limit**

Approximately seven submissions provided other comments relating to a saturated fat limit for competitive foods. A few commenters identified potential implementation difficulties and/or recommended alternatives that could potentially lessen the burden of implementing the saturated fat standard. A State department of education, a large city government, and a food manufacturer commented that the percent of calories coming from saturated fat is not required to be included on Nutrition Facts labels, which these commenters suggested would make the implementation of the saturated fat limit challenging for SFAs. The State department of education recommended that USDA consider revising the proposed rule to address only nutrient criteria available on nutrition information labels. The large city government stated that setting the nutrition requirement for saturated fat as a gram limit, similar to the approach taken by New York City, rather than as a percent of calories, is an alternative approach that USDA should consider. An academic commenter recommended that competitive foods should not contain more than 10% of energy from saturated fats and should be fat free (with exemptions for 1-ounce servings of nuts, nut butters, seeds, and reduced fat cheese). Without providing a rationale, a nutrition professional recommended that the saturated fat standard, based on a weekly average limit.

### **8.6. Trans fat (0g as stated on the label)**

#### **8.6.1. Support**

Approximately 2,630 submissions expressed general support for a restriction on trans fat for competitive foods sold in schools. Many commenters indicated that they generally support restricting trans fats in competitive foods sold in schools, but did not comment on the specific restriction proposed. Many commenters, including advocacy organizations, health care associations, and a school district, stated that the proposed limit is consistent with the DGA and is associated with a reduced risk of various chronic diseases while still providing for adequate intake of essential nutrients. Additionally, many of these commenters expressed support for the flexibility in the proposed trans fat limit, which would not require the total elimination of trans fats, pointing to food products like meat and milk that have very small amounts of naturally occurring trans fats. Despite a stated belief that the trans fat restriction is inconsistent with the NSLP and the SBP, a professional association applauded USDA's proposed restriction on trans fats and welcomed a similar change to all of USDA's food programs. Two advocacy organizations expressed support for the trans fat standard reasoning that the proposed limit is supported by recommendations from the IOM. Another advocacy organization commented that they support the proposed trans fat restriction as it would apply to snacks and cited a recent Health Impact Assessment the organization had completed in partnership with the Pew Charitable Trusts' Kids' Safe and Healthful Foods Project and the Health Impact Project as the basis for its opinion.

Additionally, some commenters, including a school food service staff member, a trade association, and food manufacturers, expressed their support for restricting trans fats, as opposed to total fats, to be consistent with other USDA programs. An individual commented that only hazardous fats, like trans fats, should be restricted.

In addition to expressing support for the proposed trans fat restriction, a school district and a county department of public health both encouraged USDA to continually update the requirements to reflect new DGA recommendations.

#### **8.6.2. Trans fat restriction should be less stringent**

Approximately three submissions expressed opposition to the proposed restriction on trans fat, arguing in favor of either making the proposed restriction less stringent or eliminating the standard entirely. An

individual commented that the proposed trans fat limit was too restrictive because meat products naturally contain more trans fat than the proposed allowance for naturally occurring trans fat. This commenter stated that a restriction on added trans fats, as opposed to naturally occurring trans fats, would be acceptable, but implementation of this type of trans fat standard would be difficult because labeling regulations do not distinguish between naturally occurring and added trans fats. Similarly, other individual commenters suggested that trans fat should be permitted so long as it is naturally occurring, with one commenter suggesting that artificial trans fats should be prohibited.

### **8.6.3. Other**

Approximately 100 submissions provided other comments relating to the proposed trans fat limit. Several commenters, including, advocacy organizations, a county public health department, and individual commenters, urged USDA to expand the restriction to eliminate all foods containing trans fats. These commenters recommended that the standard include a specification that foods containing partially-hydrogenated oils are not allowed to be sold in schools. Without providing a rationale, a nutrition professional recommended that the saturated fat standard should be based on a weekly average limit.

A school food service staff member commented that the trans fat restriction would have little impact on the foods sold at schools because manufacturers have already reformulated many products to eliminate trans fats.

A State department of education requested clarification on the meaning of “per portion as packaged” as used in reference to the trans fat limit. This commenter stated that clarification was necessary because “per portion” and “per serving” are terms referenced throughout the proposed rule without specification of the difference.

## **8.7. Sodium**

### **8.7.1. General support**

Approximately 2,610 submissions generally agreed with the proposed sodium restrictions for competitive foods without commenting on specific elements of the restrictions. Many of these commenters expressed support for both the proposed competitive food sodium limits for snacks/side items and those for entrées. Some of these commenters, including advocacy organizations and health care associations, commented that the proposed sodium limits would contribute significantly to sodium reduction in schools and would complement the gradual reduction that is happening in the school meals programs. Some commenters explained that reductions in sodium consumption at schools would be beneficial because sodium consumption among children greatly exceeds recommended daily limits. Additionally, numerous commenters expressed support for the proposed sodium limit, reasoning that children are becoming accustomed to high levels of sodium at an early age and the restriction would have a positive effect on children's taste preferences.

Others, including advocacy organizations, health care associations, and a trade association, cited studies that they asserted show a growing prevalence of high blood pressure in American children linked to high sodium intake levels, as well as studies that they asserted show that reducing daily salt intake to be closer to DGA recommended levels would save lives and reduce health care costs. In particular, an advocacy organization explained that in addition to high blood pressure, excess sodium consumption is strongly associated with the increased risk of heart attack, stroke, and kidney disease. A health care association alleged that it has been estimated that a national public health strategy to reduce daily salt intake by 1,200 mg of sodium, to be closer to DGA recommended levels, could reduce the annual number of deaths from heart disease, stroke, and heart attack by 150,000 and reduce health care costs by \$1.5 trillion over 20

years. The advocacy organization went on to state that children and adolescents are at risk of developing heart disease at an earlier age now because an estimated 97% currently consume too much salt.

Some advocacy organizations and a trade association acknowledged that the proposed sodium limit may pose challenges for schools and the food industry. However, these commenters asserted that many companies and schools are already working towards reducing sodium in popular meal items, many of which are also served through a la carte, and that a number of vending items could easily meet the limits with only slight reformulation. A State department of education expressed support for the sodium restrictions reasoning that they align with IOM and DGA guidelines.

Although it supports the proposed sodium limits for competitive foods, a trade association urged USDA to keep in mind that sodium is also used as a preservative in some food systems and that less restrictive sodium levels for certain competitive foods might be appropriate given the need to maintain shelf life for foods.

### **8.7.1. General opposition**

Approximately 910 submissions generally opposed the proposed sodium restrictions for competitive foods without commenting on specific elements of the restrictions. Many commenters expressing general opposition to the proposed sodium restrictions, including a professional association, a State department of education, trade associations, food manufacturers, a county public health department, a school district, a vending company owner, school food service staff members, and individual commenters, reasoned that the sodium restrictions should be consistent with the NSLP requirements. Some of these commenters asserted that it would be impractical, if not impossible, to manage a different standard when some of the same food items may be served as either a la carte or reimbursable meal selections.

Specifically, a State department of education recommended that USDA set sodium limits for competitive foods similar to the HUSSC Bronze through Gold standards initially, and work toward reducing the sodium gradually in line with the standards for Gold of Distinction, setting timelines similar to those established in the implementation of the recently updated NSLP/SBP nutrition standards. Similarly, food manufacturers, trade associations, a professional association, school food service staff members, and a school food service company suggested that if the final rule does have sodium restrictions, they should be phased in to allow taste preferences and manufacturers time to adjust.

A few commenters, including a school food service company and a school food service staff member, opposed the proposed sodium restrictions, reasoning that products available on the market would not meet these standards. An individual commenter disapproved of the proposed sodium limit, alleging that there is little science that suggests that sodium needs to be limited for any long-term health reasons. A school district expressed opposition for the proposed standards, reasoning that students would not follow a low-sodium diet outside of the school environment and would therefore not find the low-sodium foods necessary to meet the proposed restrictions palatable. A food manufacturer, professional associations, and an individual commenter urged USDA to delay the sodium targets until it conducts additional analyses regarding the current sodium levels in the NSLP/SBP and the health impacts of reducing sodium intake.

### **8.7.3. Non-NSLP/SBP snack and side items: ≤ 200 mg sodium per portion as packaged**

#### **8.7.3.1. Support**

Approximately 25 submissions expressed support for the proposed sodium limit for snacks and side items. Many of these commenters expressed support for both the proposed sodium limits for snacks and



those proposed for non-NSLP/SBP entrée items, and provided the rationale previously discussed in Section 8.7.1 above. In addition to expressing support for the proposed sodium restriction, a school district and a county public health department both encouraged USDA to continually update the requirements to reflect new DGA recommendations.

#### **8.7.3.2. Sodium restriction for snacks/sides should be more restrictive**

Two submissions were opposed to the proposed sodium restriction for snacks/sides, arguing in favor of making the proposed restriction more stringent. The commenters addressing this issue stated a general opinion that the sodium restriction for snacks/sides should be more stringent without providing a specific alternative. In addition to expressing an opinion that the sodium restriction should be more restrictive, an individual commenter recommended that schools use healthier alternatives to sodium, like sea salt.

#### **8.7.3.3. Sodium restriction for snacks/sides should be less restrictive**

Approximately 90 submissions were opposed to the sodium restriction for snacks/side items, stating that the sodium limit as proposed is too restrictive. In opposition to the proposed sodium standard, numerous commenters alleged inconsistencies between current USDA programs and other nutritional guidelines that they described to be authoritative.

Several commenters, including school food service staff members, trade associations, food manufacturers, a professional association, and an individual commenter, stated that the proposed sodium limit for competitively sold snacks/side items is inconsistent with the standards guiding USDA's current HUSSC. Many of these commenters mentioned that the HUSSC was developed by FNS and includes a less restrictive sodium standard for non-NSLP/SBP side items and snacks of 480 mg. A food manufacturer and a trade association reasoned that a revised sodium standard that was consistent with the HUSSC program would ease the implementation burden of the proposed rule because foods meeting the voluntary HUSSC standards are already being sold in schools. After requesting that the sodium restriction mirror those from the HUSSC program, a school food service staff member requested that, at a minimum, the sodium limit initially be set at the same level as under the HUSSC program and then USDA could allow for a gradual reduction consistent with the school lunch regulations.

Several commenters, including school districts, State departments of education, a food manufacturer, a trade association, a school food service staff member, and an individual commenter, argued that the proposed sodium standard is inconsistent with the USDA reimbursable meals program. A State department of education and a school district stated that the competitive foods standards and NSLP standards need to be consistent because it would be difficult for schools to manage two different nutrient requirement standards. Some of the commenters discussing inconsistency specifically requested a phased approach, which the commenters stated was recommended by IOM, and was similar to the approach adopted for the implementation of the USDA reimbursable meals program. A school food service company and a State department of education reasoned that a phased approach would allow manufacturers time to develop and reformulate products. The State department of education also commented that phased implementation would allow program operators time to change preparation and service techniques.

Several commenters, including trade associations, a food manufacturer, and an individual commenter, stated that the proposed sodium standard is inconsistent with the most recent DGA. These commenters also asserted that the HHFKA requires that competitive food standards be consistent with the most recent DGA. Additionally, a trade association and a food manufacturer recommended that USDA align the sodium restrictions with FDA's "healthy" standard on sodium. In support of a less restrictive sodium limit, this food manufacturer also commented that the American Heart Association certifies individual

foods with up to 480 mg of sodium per serving to display their Heart Check Mark to designate healthy foods. Two trade associations and a school district also recommended that USDA consider the less restrictive recommendations in the Alliance for a Healthier Generation guidelines when finalizing the sodium restrictions.

Rather than requesting that the sodium restriction be consistent with some already existing standard or guideline, other commenters simply proposed a less restrictive sodium limit for non-NSLP/SBP side items/snacks. For example, other specific sodium restrictions proposed included 230 mg by a State department of education and a school district, 250 mg by a school food service staff member and a State department of education, and 360 mg – subject to gradual reduction – by a school district. After arguing for a less restrictive sodium standard, a trade association requested that, at a minimum, the sodium restriction be implemented over a 10-year period allowing both the nutritional and economic impact of these sodium standards to be observed and analyzed over time. Additionally, a school food service staff member argued that sodium restrictions were too restrictive for older children and that the restrictions should be tiered by grade level.

A few commenters, including , a school food service staff member, a county public health department, a school district, and an individual commenter, asserted that very few food items would be able to meet the proposed sodium limits for non-NSLP/SBP side items/snacks. Some commenters listed specific foods that would no longer be allowed if the proposed sodium restriction became effective: bagged snacks, baked chips, pretzels, macaroni and cheese, and cheese. Additionally, a few commenters, including a food manufacturer and a trade association, stated that beef jerky, which the commenters described as a healthy snack, would no longer be allowed in schools. Finally, several commenters asserted that those snack/side items that would meet the proposed sodium restriction would taste bad.

#### **8.7.3.4. Other comments on snack/side item sodium restriction**

Approximately eight submissions provided other comments relating to sodium restrictions for non-NSLP/SBP side items or snacks. A school food service staff member commented that the food industry may not have an adequate supply of products to meet the needs of schools if the proposed sodium restriction were to go into effect. Other school food service staff members urged consistency with NSLP sodium restrictions.

#### **8.7.4. Non-NSLP/SBP entrée items: ≤ 480 mg per portion**

##### **8.7.4.1. Support**

Approximately 20 submissions expressed support for the proposed sodium limit for non-NSLP/SBP entrée items. Many of these commenters expressed support for both the proposed sodium limits for snacks and those proposed for non-NSLP/SBP entrée items, and provided the rationale previously discussed in Section 8.7.1 above.

##### **8.7.4.2. Sodium restriction for entrees should be more restrictive**

Approximately four submissions were opposed to the proposed sodium restriction for non-NSLP/SBP entrees, requesting that the sodium limit for such competitive food items should be made more restrictive. In addition to requesting that the sodium restriction be revised to be less than or equal to 400 mg per entree, a school district and a county public health department both encouraged USDA to continually update the requirement to reflect new DGA recommendations. In addition to expressing an opinion that the sodium restriction should be more restrictive, an individual commenter recommended that schools use healthier alternatives to sodium, like sea salt.

#### **8.7.4.3. Sodium restriction for entrees should be less restrictive**

Approximately 80 submissions were opposed to the sodium proposed sodium restriction for non-NSLP/SBP entrees, stating that the proposed standard is too restrictive. In opposition to the proposed sodium standard, numerous commenters alleged inconsistencies between current USDA programs and other nutrient guidelines that they described to be authoritative. These commenters expressed the same arguments of inconsistency in expressing their opposition to the proposed sodium limit for non-NSLP/SBP side items and snacks. Therefore, these arguments are summarized in section 8.7.3.3.

Rather than requesting that the sodium restriction be consistent with some already existing standard or guideline, other commenters simply proposed a less restrictive standard. For example, other specific sodium restrictions proposed included a gradual reduction to 550 mg by a State department of education, a gradual reduction to 650 mg by a school food service staff member, and 600 mg – subject to gradual reduction – by a school food service company. A few commenters, including school food service staff members, argued that sodium restrictions for entrees should be tiered by grade level. After arguing for a less restrictive sodium standard, a trade association requested that, at a minimum, the sodium restriction should be implemented over a 10-year period allowing both the nutritional and economic impact of these sodium standards to be observed and analyzed over time.

In support of their argument for less restrictive sodium restrictions on entrees, a few commenters, including a professional association, described the potential negative financial impact on manufacturers of protein based entrees (e.g., beef and chicken). A school food service staff member commented that the financial impacts that would likely be experienced by manufacturers of protein based entrees would eventually be passed on to schools.

A few commenters, including school food service staff members and a school district, asserted that very few food items would be able to meet the proposed sodium restriction. Some commenters listed specific foods that would no longer be allowed if the proposed sodium restriction became effective: soups, second entrees, healthy option entrees, cheese, sandwiches, reduced sodium deli meats, and pizza.

#### **8.7.4.4. Other comments on sodium restriction for entrée items**

Approximately four submissions provided other comments relating to the proposed sodium restriction for entrée items. A State department of education recommended that USDA revise the sodium restriction to be consistent with the school meal program. Additionally, a school food service staff member commented that the sodium restrictions should reflect the differing calorie needs of children at different ages.

#### **8.7.5. Other comments on sodium limits**

Approximately 120 submissions provided other comments relating to sodium limits for competitive foods. Many commenters, including school food service staff members, food manufacturers, State departments of education, trade associations, professional associations, school districts, a county public health department, a nutrition professional, a vending company owner, an advocacy organization, and individual commenters, stressed the importance of having consistent sodium standards between the reimbursable meal programs and the competitive foods requirements. Most commenters seeking consistency between these programs either requested that the competitive foods program include a phased approach or asserted that it would be very difficult to implement different sodium standards for meals and competitive foods. A food manufacturer specified that in addition to mirroring the phased-in approach of

the reimbursable meal program, the competitive foods rule should follow the requirement that USDA certify that it has evaluated the science surrounding sodium reduction and its impacts on human health.

Several commenters, including a school food service staff member and a member of the food industry, requested a phased approach to sodium reductions without reference to consistency to the school meal program. For example, a school food service staff member and a school food service company commented that a phased approach is necessary to allow manufacturers time to reformulate the products that they offer. Other commenters reasoned that a gradual reduction would allow taste preferences to adjust, reducing the likelihood that reduced sodium products would be rejected and discarded.

Several commenters, including food manufacturers, trade associations, a school district, an individual commenter, and a professional association, urged USDA to hold off on moving forward with the sodium requirements until the agency has completed an assessment of available research on the health impacts of sodium. A food manufacturer commented that the IOM acknowledged that significant gaps exist in the current understanding of sodium metabolism and sodium reduction on consumer behavior. This commenter went on to state that the IOM has identified four areas for future research: (1) understanding salt taste; (2) sodium reduction methods that do not compromise palatability, physical properties and safety; (3) consumer awareness and behavior impacted by sodium reductions; and (4) tracking sodium reductions and its effects on consumption, taste preferences, and health. A few food manufacturers and trade associations suggested that USDA may want to wait to receive recommendations from the IOM assembled committee that is currently examining the negative health consequences of lowering sodium levels before implementing any mandatory sodium restrictions.

A few commenters, including a trade association and food industry companies, raised issues relating to the use of sodium as a preservative and recommended that USDA consider whether this would warrant less restrictive sodium levels for certain competitive foods given the need to maintain shelf life. In addition to preservation, a trade association described how sodium can be essential to a number of food processes: maintaining food safety, taste, flavor, the development of a product's physical properties, and additional food functionalities. A school food service staff member expressed concern that nuts and seeds are healthy, but that the proposed sodium limits would prohibit them because of their sodium content.

A few commenters requested specific exemptions from the sodium limits. A food manufacturer requested, if a phased approach to sodium limits in competitive foods was not adopted, that USDA exempt natural reduced fat cheese and reduced sodium, pasteurized processed cheese from the sodium standard, which would be similar to the Alliance for a Healthier Generation guidelines. A trade association requested an exemption for soup that would allow it to contain up to 480 mg of sodium per labeled serving size, which the commenter reasoned is consistent with guidance from the American Heart Association, Alliance for a Healthier Generation guidelines, and HUSSC criteria. A vending company requested an exemption for high protein or meat based products such as sausages and beef jerky. Although not related to a specific product, a school district suggested that the competitive food sodium limits include an exemption for naturally occurring sodium in foods.

A few commenters, including trade associations and an advocacy organization, expressed support for the sodium limits being based on a "per portion" measurement. An advocacy organization expressed support for the "per portion" measurement reasoning that this form of a sodium limit would help to limit the number of larger snack food items currently sold in schools that are labeled with two or more servings but are consumed in one sitting.

A few commenters, including a food manufacturer, recommended that sodium levels be tiered by age/grade level.

An advocacy organization asked that USDA ban any new substances that may be developed as sodium substitutes in foods sold in schools, reasoning that no one knows the health impacts of these new substances.

A few commenters, including an advocacy organization and a county public health department, recommended that the sodium standards be re-evaluated at some time in the future. For example, a county public health department recommended that reevaluation occur every 5 to 10 years. And an advocacy organization encouraged USDA to continually monitor progress in reaching relevant benchmarks.

## **8.8. Sugar**

### **8.8.1. General support**

Approximately 2,590 submissions, including a county government, a trade association, health care associations, and individual commenters, expressed general support for a sugar restriction for competitive foods sold in schools. Some of these commenters did not elaborate or provide rationale for their support. An advocacy organization applauded the proposed nutrient standards, including sugar, and commented that limiting consumption of added sugars would lower children's risk of obesity and other harmful conditions. A health care association expressed support for a restriction on sugar, stating that the restriction would generally help to preclude the sale of candy and other confections, whole milk, jams, jellies and certain fruit products that contain added sugars on elementary and middle school campuses, and restrict their availability in high schools. A trade association and an academic commenter supported that the proposed sugar limit was based on total sugar within set calorie limits and asserted that this is relevant metabolically because sugars added to foods are treated similarly by the body as sugar that is already present in the food, and therefore added sugars do not necessarily make the food inferior.

#### **8.8.1.1. Support Alternative C1: $\leq$ 35% of calories from total sugars in foods**

Approximately 70 submissions supported Alternative C1, which specifies that the total sugars in a competitive food item cannot exceed 35% of its calories per portion. Several commenters, including advocacy organizations, nutrition professionals, a professional association, a consulting firm, and a county public health department, expressed support for this alternative, reasoning that it would be more protective than Alternative C2. Many commenters stated that a more protective standard is preferable because they believe that consumption of excess sugars increases the risk of obesity, diabetes, and associated chronic diseases, including heart disease and cancer, and dental caries.

Numerous commenters expressed support for Alternative C1 based on an expressed belief that Alternative C1 is consistent with other food standards and other nutritional guidelines that the commenters described to be authoritative. The most frequently cited authority as a basis for support of Alternative C1 was the IOM recommendations. Other commenters expressed support for Alternative C1 citing consistency with the DGA, the HUSSC criteria, the Alliance for a Healthier Generation guidelines, American Heart Association recommendations, and American Cancer Society guidelines. An advocacy organization commented that they supported Alternative C1 and cited a recent Health Impact Assessment it had completed in partnership with the Pew Charitable Trusts' Kids' Safe and Healthful Foods Project and the Health Impact Project as the basis for its opinion. A trade association expressed support for Alternative C1, noting that calories are the most common unit of measurement for other Federal, State, and local food standards.

Several commenters, including advocacy organizations, health care associations, professional associations, and a consulting firm, asserted that Alternative C1, as opposed to Alternative C2, would

eliminate the sale of certain food products that the commenters believed to have low nutritional values: ice pops, fruit snacks, ice creams, pudding, granola bars, and snack cakes.

Several commenters, including a State department of education, a State department of agriculture, and an individual commenter, expressed support for Alternative C1, reasoning that it would be easier to implement than Alternative C2. Another State government agency commented that the information needed to implement Alternative C1, as opposed to Alternative C2, is available through the nutrition label, which lists the percentage of calories provided by sugar. A trade association and a school district stated that Alternative C1 would be easier to implement because it was less confusing than Alternative C2.

#### **8.8.1.2. Support Alternative C2: ≤ 35% of weight from total sugars in foods**

Approximately 1,165 submissions supported Alternative C2, which specifies that the total sugars in a competitive food item cannot exceed 35% of its weight per portion. Many commenters, including school food service staff members, individual commenters, nutrition professionals, professional associations, school districts, a county public health department, a State department of education, a trade association, and a health care association, expressed support for Alternative C2, reasoning that it is consistent with the measurement methods currently relied on in many school food programs and by many food manufacturers. Commenters asserted that measuring allowable sugars by weight is the standard measurement that has been adopted by California, Illinois, Michigan, and North Carolina. Many commenters reasoned that adopting Federal standards similar to those that are already being relied on in many jurisdictions would allow for an easier transition to the new regulations than the imposition of a new method for measuring the acceptability of the sugar content of foods sold in schools. Numerous other commenters, including nutrition professionals, individual commenters, school food service staff members, trade associations, food manufacturers, professional associations, a school district, and a vending company owner, expressed support for Alternative C2, citing consistency with the HUSSC criteria and the Alliance for a Healthier Generation guidelines. A food manufacturer also listed the National Alliance for Nutrition and Activity as a voluntary program that utilizes the sugar by weight standard for competitive foods. A few individual commenters argued that, in contrast to Alternative C2, Alternative C1 was an untested approach.

Many commenters, including trade associations, food manufacturers, food service industry companies, and a professional association, expressed support for Alternative C2, as opposed to Alternative C1, because it would allow for the sale of more products. Most commenters raising this issue, including food manufacturers, school food service staff members, trade associations, a nutrition professional, an individual commenter, and a State department of education, cited the availability of dairy products as their major concern. Additional food products that commenters supported being sold as competitive foods in schools that they alleged would qualify under Alternative C2 but not under Alternative C1 include yogurt parfaits with sweetened frozen fruit, granola bars, and other snacks characterized by commenters as “healthy,” such as canned peaches in light syrup.

A food manufacturer that was in favor of Alternative C2 commented on what they identified as an inaccuracy in the All Food NPRM. Specifically, this commenter stated that although the proposed regulation states Alternative C2 would allow ice cream to qualify as an acceptable competitive food product, this is not true. The commenter explained that Federal law dictates that ice cream meet specific ingredient parameters (including a minimum of 10% milkfat by weight) that make it virtually impossible for any ice cream product to qualify under either C1 or C2. This commenter stated that this clarification is important to ensure that the feedback from the public on the proposed rule is accurate.

A trade association expressed preference for Alternative C2 reasoning that sugar improves the taste of many nutrient rich foods and overly restrictive sugar intake recommendations could create the unintended consequence of discouraging the consumption of some healthful foods. A couple individual commenters reasoned that Alternative C1 would penalize those foods, like lactose, that contain their own natural sugars. Additionally, a few individual commenters and a food manufacturer expressed a preference for Alternative C2, reasoning that it would allow schools to sell foods that would not meet the Alternative C1 standard to raise revenues for school programs.

Several commenters, including school food service staff members, State departments of education, a school district, a school food service company, and a trade association, expressed support for Alternative C2 because they believe it would be easier to implement. Several commenters, including a State department of education and a professional association, explained that calculators to assist school nutrition professionals already exist to calculate sugars measured as percentages of weight to assist in implementation. A few commenters, including State departments of education, a food manufacturer, and a school food service company, asserted that it is easier for food service personnel to assess a product's conformance to the sugar standard as a percentage of the product's weight because it would only involve calculations based on information provided on a product's Nutrition Facts label. A State department of education expressed the belief that the method of measuring sugar content by weight is more accurate than measuring by percentage of calories. A school food service staff member commented that additional education would be needed for food service staff if Alternative C1, as opposed to Alternative C2, became part of the final rule. After expressing supporting for Alternative C2 over Alternative C1, another school food service staff member requested guidance on implementing the proposed standard, stating that Alternative C2 as proposed requires a more detailed calculation.

A food manufacturer commented that FNS's cost-benefit analysis, financial assumptions, justification for minimal financial impact and supporting data (including examples of states which have successfully implemented programs to improve nutrition with no financial impact) are only valid under Alternative C2 because the Alliance for a Healthier Generation standard is the real life standard under which the majority of these assumptions are based. This commenter asserted that because Alternative 1 is based on the newly released IOM standard for sugars, it renders successful examples of implementation in the proposed rule and the resultant cost-benefit analysis invalid, and the justification of minimal financial impact becomes erroneous under the standard if Alternative C1 is enacted.

An individual commented that Alternative C2 was preferable because Alternative C1 would force manufacturers to make a choice between discontinuing products and adding bulking agents to their products that would increase the calories of these foods without adding any nutritional value. Similarly, a food manufacturer asserted that the only way manufacturers of frozen dairy snacks could attempt to meet Alternative C1 would be to (1) add calories from fat and/or carbohydrates (i.e., bulking agents) to boost calories to lower the percentage provided by sugar, or (2) utilize artificial non-nutritive sweeteners. This commenter asserted that neither of these product changes are supported by school systems, school nutritionists, or parents.

Several commenters, including school food service staff members, a nutrition professional, an individual commenter, an advocacy organization, a trade association, and a food manufacturer, rejected both Alternative C1 and Alternative C2 as the ideal approach for limiting sugars in competitive foods, but favored Alternative C2 of the two.

### **8.8.1.3. Support some other alternative restriction of sugars in competitive foods**

Approximately 45 submissions provided comments expressing support for some other alternative restriction for sugars in competitive foods. Several commenters urged USDA to allow the sale of

competitive foods in schools that meet either Alternative C1 or Alternative C2. A trade association explained that allowing food items to satisfy either alternative would provide the greatest flexibility. A State department of education reasoned that as long as the food service operators keep appropriate documentation to support their choices, satisfaction of either alternative should be sufficient because all food items can be included in a healthy diet if consumed in moderation. A few commenters, including a State department of education and a school food service staff member, urged USDA to leave the decision to the local jurisdictions to determine which of the alternative sugar limits was preferable.

Many commenters, including advocacy organizations, trade associations, health care associations, and a school district, described what they characterized as the ideal sugar standard to be one that is based on added sugars rather than total sugars. Some of these commenters, including advocacy organizations, a trade association, and a health care association, argued that added sugars are a significant source of excess calories in children's diets and provide no nutritional value. A health care association asserted that added sugars, when considered with solid fats and excess energy intake, have been linked to health concerns, including overweight and obesity, type 2 diabetes or prediabetes, inflammation, and cardiovascular disease. Several commenters recommended that one way to lower the consumption of added sugars would be to cap or limit the number of grams of added sugars a qualifying competitive food could contain. However, several commenters stated that added sugar content is not included on Nutrition Facts labels making it difficult to implement a sugar limit based on added sugars. Consequently, several commenters urged USDA to work with FDA to ensure that added sugars are listed on the revised Nutrition Facts label.

Some commenters, including State departments of education, individual commenters, and a school food service staff member, encouraged USDA to revise the sugar restriction to be based on a standard that can be easily evaluated using the information available on nutrition labels. One approach described by an advocacy organization, a school food service staff member, and a large city government was a standard based on an upper limit for total grams of sugar allowable in a packaged snack. The large city government reasoned that a limit on the total grams of sugar allowed, as opposed to a percent of calories or weight, makes for easier implementation by removing unnecessary calculations and making the standards easier to understand.

Several commenters, including school food service staff members, an advocacy organization, and an individual commenter, reiterated the importance of consistency between the sugar restriction in the competitive foods programs and the sugar restriction in other USDA programs.

Additionally, a few commenters, including individuals, requested that the final sugar restriction be stronger than proposed because of the health risks associated with sugar intake, the addictive properties of sugar, and the consumption of sugar in excess of what is recommended by the American Heart Association. A large city government recommended a standard of no more than 10 grams of sugar per item, which the commenter described as more restrictive than either of the proposed alternatives. A teacher commented that total sugar levels should be as low as reasonable and should be measured as a percentage of calories, rather than weight.

An individual commenter urged USDA to focus on eliminating fructose-based added sugars, which the commenter characterized as the greatest nutritional threat.

### **8.8.2. Sugar limit should be less stringent than limits discussed in the proposal**

Approximately 12 submissions were opposed to the proposed restriction on sugar, arguing in favor of either making the proposed restriction less stringent or eliminating the standard entirely. Several commenters, including trade associations, food manufacturers, and individual commenters, recommended



the elimination of any sugar restriction for competitive foods to ensure consistency between the competitive food requirements and other USDA programs. A trade association commented that a restriction on sugar is not a necessary component of the competitive food standards because the overall calorie limit would function to prevent excess sugar consumption. Furthermore, a food manufacturer emphasized the importance of consistency between the different USDA programs for foods in schools from an administrative burden perspective.

A State department of education proposed a less restrictive sugar standard of 40% of calories from total sugars. An individual commenter argued that the sugar restriction is too stringent and reasoned that healthy products, like CLIF® Bars, would no longer be available to students if the rules become effective as proposed.

### **8.8.3. Comments on exemptions from sugar limit**

Approximately 350 submissions addressed the proposed exemptions from a sugar limit without discussing a specific element of the proposed exemptions. Many of these commenters expressed support for the exemptions from the sugar limit as they were proposed. A school food service staff member requested an exemption from the sugar limit for low-fat/nonfat dairy products.

#### **8.8.3.1. Dried fruits/vegetables with no added nutritive sweeteners**

Approximately 130 submissions addressed the proposed exemption from the sugar limit for dried fruits/vegetables. Numerous commenters, including an advocacy organization and trade associations, expressed general support for an exemption from the sugar restriction for dried fruits/vegetables with no added nutritive sweeteners. Many commenters expressing support for this exemption provided detailed descriptions of the health benefits associated with the consumption of certain fruits and vegetables.

Many commenters, including school food service staff members, members of the farming industry, professional associations, State departments of education, trade associations, academic commenters, State Congressmen, Federal U.S. Senators, a State Governor, a nutrition professional, a food manufacturer, and an individual commenter, expressed support for an expanded exemption for dried fruits/vegetables covering those where nutritive sweeteners have been added for necessary processing and palatability. The majority of commenters expressing support for an expanded exemption described the health benefits associated with the consumption of fruits and vegetables. Additionally, several other commenters reasoned that the competitive food standards need to be consistent with the reimbursable meal programs, which allow for dried fruits/vegetables with added nutritive sweeteners for processing and palatability. Specific dried fruits addressed in these arguments include: cranberries, red tart cherries, blueberries, mangoes, papayas, pineapples, chopped dates, chopped figs, and chopped plums. Several commenters asserted that cranberries are naturally low in sugar and after the addition of nutritive sweeteners these dried fruits have comparable total sugar content to the amount found naturally in many other fruits.

School food service staff members, individual commenters, a trade association, and a professional association recommended that, if the exemption was expanded, a list of acceptable dried fruits/vegetables containing nutritive sweeteners should be included in a guidance document rather than in the regulation itself. An advocacy organization and a State department of education expressed support for an expanded exemption to cover dried fruits and vegetables prepared with small amounts of nutritive sweeteners to promote the consumption of otherwise healthy foods, but recommended that USDA specify the type and maximum amount of nutritive sweetener that would be allowed as part of this exemption in the final rule. In contrast, a professional association urged USDA to keep the final rule simple and allow all dried fruits,

regardless of whether or not they include added sugars, to be covered by the exemption from the sugar requirement.

A trade association, a food manufacturer, and an academic commenter requested that the sugar exemption be expanded to cover 100% fruit without added sugar without specification for the form of the fruit, which would exempt, for example, fruit purees. A food manufacturer asserted that this would be consistent with the DGA, which states that all fruits that are prepared without added solid fats, sugars, starches, and sodium are nutrient dense. Additionally, a trade association urged that processed fruit snacks that do not contain added sugars and otherwise meet nutrient standards for calories, fats, and sodium, should be exempt from the sugar limit because these types of foods can make a positive nutritional contribution to the diets of children (e.g., fruit leathers, fruit snacks, and dehydrated fruits).

In contrast, many other commenters, including advocacy organizations, health care associations, an industry association, and a nutrition professional, stated that they did not support an exemption for dried fruits that are processed with added caloric sweeteners. An industry association reasoned that traditional no-added sugar dried fruits, such as raisins, figs, dates, dried plums and apricots, offer nutritionally sound and economical alternatives that obviate the need for an exemption for sugar-added alternatives. Additionally, a few State departments of education urged USDA to clarify that products with added non-nutritive sweeteners are not covered by the exemption from the sugar limit.

#### **8.8.3.2. Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat**

Approximately seven submissions addressed the proposed exemption from the sugar limit for products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat. A few commenters, including an advocacy organization, a health care association, and a trade association expressed general support for this proposed exemption. The trade industry association also recommended that USDA's definition of "nut mixture" include soy nuts and dried edamame.

#### **8.8.3.3. Flavored and unflavored nonfat and low-fat yogurt with no more than 30 grams of total sugars per 8oz**

Approximately 360 submissions addressed the proposed exemption from the sugar limit for flavored and unflavored nonfat and low-fat yogurt with no more than 30 grams of total sugars per 8 ounces. Most of these commenters, including advocacy organizations, health care associations, trade associations, a professional association, an individual commenter, an association representing farmer cooperatives across the country, a school district, and a school food service staff member, expressed support for this proposed exemption. Support was frequently expressed for the yogurt exemption based on a desire to increase the availability of popular dairy products that children are likely to eat, as well as consistency with other nutrition standards and recommendations for yogurt.

Several commenters, including advocacy organizations and health care associations, recommended that the 30 gram total sugar limit in the proposed yogurt exemption should be scaled proportionately by serving size (e.g., 22 grams total sugar for a 6 ounce portion). A State government agency recommended that USDA consider revising the yogurt exemption to be expressed per 6 ounce portion, rather than per 8 ounce portion, reasoning that most commercially available pre-portioned yogurts are in 6 ounce containers.

However, several commenters proposed more restrictive standards for yogurt products to receive an exemption from the sugar limit. Alternative standards proposed included 20 grams of total sugar per 8 ounce serving by several individual commenters and an advocacy organization, 20 grams of total sugar

per 6 ounce serving by a few advocacy organizations, and 10 grams of total sugar per 8 ounce serving by an individual commenter. An advocacy organization expressed concern over the multiple exceptions for dairy products in the proposed competitive food and beverage standards, including the exemption from the sugar limit for certain yogurt, hypothesizing that these exceptions are concessions to appease dairy lobbyists, rather than decisions based on concern for children's health. Additionally, a commenter recommended that yogurts that contain artificial sweeteners should not qualify for the exemption from the sugar restriction.

Additionally, a few commenters proposed less restrictive standards for yogurt products. For example, a few school food service staff members proposed that the exclusion be modified to allow 35 grams of total sugar per 8 ounce serving to allow flexibility. A school food service staff member and an individual commenter expressed concern that the current products sold at their schools would not meet these restrictive standards. A State department of education commented that manufacturers would be required to reformulate products to bring the total sugar content in line with the proposed standard. Similarly, another State department of education requested that the yogurt exemption from the sugar limit be implemented using a phased approach to provide manufacturers the necessary time to reformulate products.

#### **8.8.4. Comments relating to non-nutritive sweeteners (i.e., low-cal sweeteners, artificial sweeteners)**

Approximately 40 submissions commented on the use of non-nutritive sweeteners in food products sold in schools. Citing a wide range of reasons, most of these commenters, which include State government agencies, individual commenters, school food service staff members, advocacy organizations, a beverage manufacturer, local and municipal governments, a professional association, and a trade association, expressed opposition to the use of non-nutritive sweeteners in foods products sold in schools. Some of these commenters, including State government agencies, a large city government, and an advocacy organization, reasoned that there is little evidence on the long-term health effects of non-nutritive sweeteners, particularly from exposure initiated in childhood. An advocacy organization urged USDA to commission a study by the IOM on the safety of artificial sweeteners.

Additionally, a few commenters, including a State department of education and a trade association, stated that evidence of the effectiveness of non-nutritive sweeteners in promoting weight loss is inconclusive. Several commenters, including State departments of education and a beverage manufacturer, suggested that non-nutritive sweeteners can increase cravings for sweet foods and actually lead to increased calorie consumption. In support of this argument, a State department of education cited a quote from a Harvard School of Public Health Study, stating "although the scientific findings are mixed and non-conclusive, there is worrisome evidence that regular use of artificial sweeteners may promote weight gain." Finally, a few other commenters asserted that the inclusion of non-nutritive sweeteners in foods sold at schools contradicts the general philosophy of focusing on the consumption of whole or minimally processed foods that are naturally nutrient rich and low in added sugars.

As an alternative to the use of non-nutritive sweeteners, a county government recommended that natural sweeteners, such as honey and molasses, should be offered as condiments. Without recommending the elimination of non-nutritive sweeteners in foods sold in schools, a State department of education and a school food service staff member urged USDA not to promote the use of non-nutritive sweeteners.

In contrast, several trade associations supported the use of non-nutritive sweeteners. A few trade associations argued that all safe and suitable non-nutritive sweeteners that have undergone rigorous scrutiny by the FDA should be allowed in competitive foods. Another trade association asserted that current scientific literature regarding the consumption of non-nutritive sweeteners indicates that these

substances may be associated with the reduction of body fat gain when used in place of caloric sweeteners in beverages consumed by children between 4 and 12 years of age. Furthermore, a different trade association stated that studies demonstrate that when sucrose is replaced by low-calorie sweeteners, non-dieting obese and normal weight individuals consume fewer calories. This commenter went on to assert that multidisciplinary weight control programs that include the use of no-, low-, and reduced-calorie foods and beverages sweetened with low-calorie sweeteners may facilitate weight loss and weight maintenance. Another trade association argued that steviol glycosides provide an opportunity to reduce the total sugar in products sold in schools, which would support the objective of the proposed rule to improve the health and well-being of children and at the same time would help food and beverage companies to meet the nutrient standards proposed in the rule.

A few trade associations requested that FNS ensure that some dairy products that already use non-nutritive sweeteners, including no-sugar-added flavored milk, light yogurt, no-sugar added ice cream and some non-standardized dairy products, would continue to be allowed for sale in schools. A trade association expressed support for the use of non-nutritive sweeteners reasoning that the use of a low-calorie sweetener in chocolate milk has proven to be one of the only ways to reduce the calorie level, maintain a favorable taste-profile to children and increase the consumption of important nutrients.

#### **8.8.5. Other comments on sugar limit**

Approximately 42 submissions provided other comments relating to a sugar limit for competitive foods sold in schools. A few commenters requested clarification on specific issues. A school food service staff member and an individual commenter recommended a specific provision be included in the final rule to address how the sugar limit should be applied to scratch made items. An individual commenter asked that USDA address how sweeteners, such as those made from the “monk fruit,” would be counted under the final rule. A food manufacturer requested that the final regulations define the calculation of total sugar specifically as “the number of grams of sugar listed on the nutrition label, divided by the total serving weight of the product listed on the label” because this commenter asserted that many schools get this calculation wrong. A State department of education commented that both proposed alternatives would be difficult to calculate because the current Nutrition Facts labels do not identify sugar amounts in the format envisioned by the proposed rule, and for this reason requested that the sugar limit correspond to the information found in current food labels.

A trade association provided general information on the studies performed evaluating the impacts of sugar on an individual diet, concluding that sugar intake is not a causative factor in any disease, including obesity. This commenter asked USDA to maintain what the trade association characterized as USDA's realistic, balanced perspectives that nutrition standards for all foods in the school environment be based on the nutritional value of the food and the contribution of those foods to an overall healthful diet, and not sugar content.

A State department of education encouraged USDA to consider the added burden of monitoring sugar content on SFA recordkeeping and State agency monitoring. A food manufacturer commented that enacting a sugar limit that is supported by those tasked to enforce and comply with the standards will be essential to making the competitive food standards successful. Citing confidential feedback this commenter has received from most school food service directors it has contacted, this food manufacturer stated that SFAs have no intention of complying with a standard that would reduce their revenues while eliminating healthy competitive foods that fall outside of an unreasonable or impractical standard.

A general advocacy or non-profit organization recommended that USDA consider excluding certain categories of foods, such as candy or confections and desserts from the competitive foods program even if

they meet the sugar standard, reasoning that these foods are not conducive to a health weight or heart health.

Finally, a trade association identified what it believes to be a technical error in the proposed rule, stating “[i]n the summary chart in page 9536 under the ‘Exemptions to the standard’ on Total Sugars, the exemption referring to ‘fresh, frozen and canned fruits/vegetables with no added sweeteners except for fruits packed in 100% juice or extra light syrup,’ the word ‘nutritive’ before ‘sweetener’ has been omitted by mistake and should be included.”

## **8.9. Calories**

### **8.9.1. General support**

Approximately 2,590 submissions expressed general support for calorie restrictions for competitive foods sold in schools. Several commenters expressed support for calorie restrictions, as opposed to other nutrient restrictions, arguing that a focus on calorie limits would be easier to implement and would ensure that food items sold are part of a healthy diet. An advocacy organization expressed support for a restriction on calories, reasoning that it would help to lower children’s risk of obesity and other harmful conditions. A health care association expressed support for a restriction on calories, stating that the restriction would generally help to preclude the sale of candy and other confections, whole milk, jams, jellies and certain fruit products that contain added sugars on elementary and middle school campuses, and would restrict their availability in high schools. Some commenters, including a health care association, a trade association, and a nutrition professional, specifically expressed support for both the proposed calorie limits for snacks/side items and the proposed calorie limits for entrée items.

### **8.9.2. General opposition**

Approximately 30 submissions expressed general opposition to the proposed calorie restrictions for competitive foods sold in schools. Some of these comments expressed concern that calorie limits are not appropriate for all types of students and would contribute to some students not getting enough food to keep them full. A trade association described inadequate nutrition among children in the United States as a growing concern and asserted that adequate nutrition is linked to the need for a balanced diet rather than a low-calorie diet. Similarly, a student expressed opposition for the proposed calorie restrictions, stating that limitations on the amount of calories available to students throughout the day would create a situation in which students are unable to acquire the foods that they need. Another student expressed opposition, stating that calories are not always bad for you. A school food service staff member urged an increase in the proposed calorie limits because it would allow their school to serve some of the more popular items the students will eat. Another school food service staff member commented that the calorie limits may be too restrictive for high school students, stating as an example that a ham and cheese on a whole grain roll would exceed the proposed entrée calorie limits.

### **8.9.3. Non-NSLP/SBP snack items/side dishes: ≤ 200 calories per portion as packaged**

#### **8.9.3.1. Support**

Approximately 940 submissions expressed support for the proposed calorie limit for non-NSLP/SBP snack items/side dishes. Many commenters, including school food service staff members, individual commenters, a health care association, a professional association, a nutrition professional, and a vending company owner, expressed general support for the proposed snack/side items calorie restriction without providing a specific rationale for that position. A school food service staff member and an individual commenter expressed support for the proposed calorie limit on snack items/side dishes, reasoning that it

was consistent with IOM recommendations and that many food items can meet the proposed standard. Similarly, an advocacy organization reasoned that the proposed calorie limit for snacks/side items was consistent with the HUSSC and IOM guidelines. A trade association agreed that the proposed threshold of less than or equal to 200 calories in snacks is reasonable and appropriate, based on the consistency of various voluntary competitive food standard programs around 200 calories per snack. A large city government supported the proposed calorie limit for snacks because it aligned with their standards for food vending machines, which this commenter asserted were based on extensive review of scientific literature, government recommendations, and consideration for implementation feasibility. A trade association expressing support for the proposed calorie limit for snack stated that this amount is about 10% of the calories a young child needs per day. An advocacy organization stated strong support for the proposed calorie restriction, describing various statistics on childhood obesity and the linkage between obesity and high calorie intake levels.

#### **8.9.3.2. Calorie limit for snacks/sides should be more restrictive**

No submissions commented that the calorie restriction for non-NSLP/SBP snack items/side dishes should be more restrictive than proposed.

#### **8.9.3.3. Calorie limit for snacks/sides should be less restrictive**

Approximately 165 submissions commented that the calorie restriction for non-NSLP/SBP snack items/side dishes should be less restrictive than proposed. Numerous commenters, including school food service staff members, food manufacturers, a trade association, a professional association, a school district, and an individual commenter, argued that the proposed calorie limit for snacks and side dishes was too restrictive because it would limit student access to many food products. Specific items listed that commenters asserted would not be able to meet the proposed calorie restriction included: ice cream, cookies, bagged snacks, whole grain and fruit muffins, fruit and granola bars, peanuts, CLIF<sup>®</sup> Bars, trail mix, and soups. A food manufacturer commented that the proposed calorie limit would restrict the sale of snack foods with one serving of cheese and one serving of whole grain crackers, which the commenter described as a popular item in middle and high schools. A few commenters, including school food service staff members, a school district, and a professional association, expressed opposition to the proposed calorie limit for snacks/side items, arguing that the inclusion of the calories associated with accompaniments would make satisfying these restrictions difficult.

Specific alternative calorie limits for snacks/side items proposed included 240 calories per serving by a school food service company and a school district, 250 calories by school food service staff members, an individual commenter, a school food service company, and a State department of education, and 300 calories by a school food service staff member. A school district and a food service industry commenter recommended that the calorie limit for snacks/sides be increased for secondary school students to 250 calories per serving.

A few commenters asserted that a less restrictive calorie standard could decrease the costs for manufacturers that would be required to reformulate and repackage products under the proposed calorie restrictions. A trade association and a food manufacturer commented that making the competitive foods standards more restrictive than the school meal programs standards would decrease revenues from competitive foods and impair the ability of SFAs to offset losses from the reimbursable meal programs with sales of competitive foods. This trade association asserted that the lower calorie limits could discourage older students, particularly those who are active in sports, from purchasing their lunch at school. A few commenters argued that the calorie limit for snacks/side items should be less restrictive than proposed, reasoning that students would be hungry if competitive foods are held to the restrictions as

proposed. Similarly, several commenters reasoned that the proposed calorie restrictions are too restrictive for student athletes.

#### **8.9.3.4. Other comments on snack/side item calorie limit**

Approximately three submissions provided other comments on calorie limits for snack/side items. A State department of education commented that the proposed calorie limit for snack/side items does not address the number of portions/units a student is able to purchase at one time or throughout the day and, therefore, does not limit the total number of calories a student can consume. A nutrition professional requested further clarification on the definition of snacks/side dishes. An individual commented that the nutritional value of reduced calorie frozen dairy desserts often exceeds many choices children may have in school.

#### **8.9.4. Non-NSLP/SBP entrée items: ≤ 350 calories per portion as served**

##### **8.9.4.1. Support**

Approximately three submissions expressed support for the proposed calorie restriction for non-NSLP/SBP entrée items. A health care association and an individual commenter expressed general support for the proposed entrée calorie restriction without providing a specific rationale. An advocacy organization stated strong support for the proposed calorie limit for non-NSLP/SBP entrees, discussing various statistics on childhood obesity and the linkage between obesity and high caloric intake levels. An individual commenter expressed concern that it would be difficult for schools to remember to include the nutrition content of condiments along with a la carte entrée sales.

##### **8.9.4.2. Calorie limit for entrees should be more restrictive**

No submissions commented that the calorie restriction for non-NSLP/SBP entrée items should be more restrictive than proposed.

##### **8.9.4.3. Calorie limit for entrees should be less restrictive**

Approximately 1,040 submissions commented that the calorie restriction for non-NSLP/SBP entrée items should be less restrictive than proposed. Numerous commenters, including nutrition professionals, school food service staff members, a food manufacturer, school districts, a food service company, and a professional association, argued that the proposed calorie limit for competitive food entrees is too restrictive because it would limit student access to many food products. Specific entrée items commenters listed as not being able to meet the proposed calorie restriction included: fruit smoothies, a loaded baked potato, BOCA Burger with low fat cheese on whole grain bun, chicken stir fry over brown rice, whole grain spaghetti with meat sauce, breaded chicken with a whole wheat bun, whole muscle entrees, large salads, spicy chicken sandwich on a Kaiser roll, peanut butter and jelly sandwich, second entrees, and healthy option entrees. An individual commented that an entrée that consists of a protein and a bun would not meet the 350 entrée calorie limit and recommended that schools be able to sell them as separate items. A few commenters, including a nutrition professional and a State department of education, opposed the proposed competitive entrée calorie restriction, pointing out that the inclusion of the calories associated with accompaniments would make satisfying these restrictions very difficult.

Many commenters argued that the proposed calorie restriction was too restrictive, reasoning that it was inconsistent with HUSSC and IOM guidelines. To ensure consistency with HUSSC and IOM guidelines, school food service staff members, an advocacy organization, a school district, an individual commenter,

and a professional association recommended a 400 calorie limit for entrée items. Other alternative restrictions for non-NSLP/SBP entrees proposed included 450 calories by a trade association, a food service company, a school food service staff member, and a school district, and 500 calories by a school food service staff member and a school food service company.

Several commenters, including a food manufacturer, stated that the calorie restriction should be less restrictive for older students. This food manufacturer and a trade association also argued that the proposed 350 calorie limit for competitive entrée items was inconsistent with the reimbursable meal standards. A few commenters expressed an opinion that the calorie restriction should be less restrictive, reasoning that students would be hungry if they are held to the restrictions as proposed. Similarly, a few commenters reasoned that the calorie restrictions are too restrictive for student athletes.

#### **8.9.4.4. Other comments on entree item calorie limit**

Approximately five submissions provided other comments on calorie limits for entrée items. A few commenters, including a State department of education, recommended eliminating the calorie limit for all entrée items that satisfy the NSLP standards. A professional association and individual commenters encouraged USDA to establish calorie limits for entrée items consistent with HUSSC, IOM, and other USDA meal programs. An individual commented that entrée calorie limits are not required for NSLP/SBP entrees.

#### **8.9.5. Other comments on calorie limits**

Approximately 60 submissions provided other comments on calorie limits. Many commenters urged USDA to ensure consistency in calorie restrictions between the competitive foods standards and the school meal programs. Additionally, a few commenters recommended that USDA make competitive food calorie limits consistent with other recommendations and guidelines, including HUSSC and IOM. A State department of education expressed concern about the proposed calorie limits because that State depends on the sale of a la carte foods and beverages to support a substantial portion of the school nutrition operation.

Several commenters asked USDA to consider whether the proposed calorie limits achieve the goals of the competitive foods program. For example, a student questioned whether a focus on calories would send the correct message to students if the intended message was a balanced diet. A State department of education commented that a calorie limit per serving does not address the number of portions/units a student is able to purchase at one time or throughout the day and therefore, does not limit the total number of calories a student can consume. A school food service staff member asserted that the proposed calorie restrictions would not change student's eating behaviors, but instead would result in children bringing unhealthy food items to school and refusing to buy the foods sold in schools.

Several commenters, including a school food service staff member, a trade association, an advocacy organization, and a student, encouraged USDA to consider the caloric needs of student athletes when finalizing the calorie restrictions. For example, a trade association provided a detailed explanation of the differences in caloric needs of students participating in athletic extracurricular activities and those that are not asserting, for example, that daily caloric needs can nearly double for an active teenage boy.

A few commenters requested specific modifications to the calorie restrictions. For example, a school food service staff member requested that the distinction between entrée and snack be eliminated. A trade association recommended an exemption from the calorie requirement for any food sold that is a fruit, vegetable, dairy product, protein food, or "whole-grain rich" grain product, which this commenter asserted would ensure that competitive foods nutrient standards would not exclude common, healthy food



items. One alternative approach to the calorie limits recommended by an individual commenter included setting restrictions based on the calorie density of foods (i.e., how many calories per gram).

#### **8.9.6. Suggestions to set calorie limits by age/grade**

Approximately 199,940 submissions, including mass mail campaigns, expressed an opinion on the need to set calorie limits by age or grade. Most commenters discussing this issue were in support of establishing a tiered calorie limit, reasoning that older students need more calories than younger students. Many commenters, including advocacy organizations, school food service staff members, health care associations, professional associations, food manufacturers, individual commenters, school districts, a State department of health, a nutrition professional, and an academic commenter, argued for tiered calorie limits similar to the structure of the reimbursable meal programs.

Several commenters, including advocacy organizations, a professional association, and a consulting firm, recommended that USDA consider a tiered approach based on grade-level to ensure consistency with standards put forth by the Healthy Schools Program of the Alliance for a Healthier Generation. An advocacy organization summarized the snack/side dish standards set by Alliance for a Healthier Generation in the following way:

Elementary school:	< 150 calories
Middle school:	< 180 calories
High school:	< 200 calories.

Other tiered calorie limit approaches for snacks/side items proposed by commenters include the following:

- Elementary: 200 calories; Middle and High Schools: 300 calories (nutrition professional).
- Elementary: 150 calories; Middle and High Schools: 200 calories (advocacy organizations, trade association, health care associations).
- Elementary: 200 calories; Middle and High Schools: 250 calories (school district, individual commenter).
- Elementary: 175 calories; Middle and High Schools: 250 calories (school district).
- Elementary: 100 calories; Middle: 140 calories; High: 180 calories (advocacy organizations).
- High School: 250 calories (individual commenter).
- K-5: 250 calories; 6-8: 300 calories; 9-12: 350 calories (food manufacturer).

Some tiered calorie limit approaches for entrees proposed by commenters include the following:

- Elementary: 260 calories; Middle and High Schools: 350 calories (advocacy organizations, trade association, health care associations).
- K-8: 400 calories; 9-12: 450 calories (school food service staff).
- K-8: 300 calories; 9-12: 350 calories (advocacy organization).
- K-8: 300 calories; 9-12: 400 calories (advocacy organization).
- Elementary: 350 calories; Middle and High Schools: 450 calories (school district, individual commenter).
- High Schools: 400 calories (school district, individual commenter).
- "Maximum should be 400/450 calories based on age/grade" (school district).
- Elementary: 300 calories; Middle and High Schools: 350 calories (advocacy organization).

Several commenters, including trade associations, provided a detailed explanation on the increasing caloric needs of students between the time they enter kindergarten to the time they graduate from high school, including asserting that daily caloric needs can nearly double within this timeframe. A few commenters also stated that the tiered calorie approach has already been successfully implemented in many schools.

In contrast, an advocacy organization expressed support for making calorie limits on snack and entrée items consistent across all age/grade groups.

#### **8.10. Other comments on nutrient standards**

Approximately 3,310 submissions provided other comments on the nutrient standards. Many commenters, including advocacy organizations, health care associations, and school districts, stressed the importance of the nutrient standards being set for items as they are sold and packaged, reasoning that nutrient standards could be easily undermined if items are packaged with more than one serving per container and only the individual serving meets the standards even though the package does not. Furthermore, many commenters stated that nutrition standards per serving rather than per package could be confusing to students as they select food or beverage items and learn about healthy eating and portion sizes. An advocacy organization and a State department of education requested that portion sizes be limited to a single serving per package, reasoning that portion size is an important part of healthy eating patterns.

Several commenters urged USDA to re-focus the nutrient standards to concentrate on healthy living. A few commenters, including a trade association and an individual commenter, urged USDA to place a greater emphasis on a balanced approach to eating, arguing that the proposed nutrient standards may incorrectly lead children to believe that there is one correct approach to healthy living. A food manufacturer recommended against profiling foods based on arbitrary nutrient values and asserted that any food can be part of a balanced diet that includes moderation and regular exercise. An advocacy organization expressed concern that USDA's focus on individual nutrients would result in the sale of highly-processed foods with only slightly better nutritional profiles. Similarly, a few individual commenters urged USDA to de-emphasize the importance of "low" in food product names (e.g., low fat or low sodium). An individual commenter warned that these labels would be used by the food industry to sell processed foods that do not satisfy the healthy eating purpose behind the nutrient standards. A few commenters, including a county government and an individual commenter, recommended that USDA consider the impact of athletic activity on the nutritional needs of students.

Many commenters urged USDA to revise the proposed nutrient standards to ensure that they are consistent with the NSLP/SBP nutrient standards. Additionally, a school food service staff member urged USDA to incorporate and integrate current State nutrition standards and HUSSC criteria into the competitive food requirements. However, a State department of education warned against applying standards/guidelines that were developed to apply to the overall diet to individual food items. A professional association urged USDA to create reasonable standards that would ensure the continued participation of students in the school meal program.

A trade association recommended that USDA adopt nutrition standards that vary by grade level, similar to the proposed standard for competitive beverages.

A State department of education expressed a desire that most "baked" varieties of currently existing snack items be allowed to be sold under the final competitive foods rules.

An individual commenter identified the following technical issue, which they recommended needed revision: "210.11(c)(1) and (c)(2)(i) are redundant and should be combined to state: All competitive foods must meet the nutrient standards in this section, 210.11."

**9. NSLP/SBP entrees and side dishes sold a la carte as competitive foods**

**9.1. Portions: NSLP/SBP menu items would have to be served in the same or smaller portion sizes as in the NSLP or SBP**

**9.1.1. Support**

Approximately eight submissions supported the proposed requirement regarding portion sizes for NSLP/SBP menu items sold as competitive foods. A few commenters, including State departments of education and a trade association, stated that the provision would assure reasonable calorie and fat limits and that keeping a consistent standard makes sense. A student emphasized the importance of reducing portion size to help control weight gain.

**9.1.2. Oppose**

Approximately six submissions opposed the proposed requirement regarding portion sizes for NSLP/SBP menu items sold as competitive foods. A few commenters, including a student and other individual commenters, requested that the provision allow larger portion sizes. For example, a student recommended raising the portion limit to 250 or 300 calories. A school food service staff member suggested the portion size be increased to 300 calories. Two individual commenters suggested that the portion sizes should be larger and the price of the menu items should be reduced.

**9.1.3. Other**

No submissions provided additional comments regarding the proposed portion sizes for NSLP/SBP menu items sold as competitive foods.

**9.2. Support Alternative A1 - NSLP/SBP entrees and side dishes sold a la carte would be exempt from all competitive foods standards except the fat and sugar standards**

Approximately 25 submissions expressed support for Alternative A1. Several commenters, including a trade association, food service companies, an advocacy organization, a health care professional, a nutrition professional, State departments of education, and school food service staff members, recommended that if NSLP/SBP foods are exempted, Alternative A1 should be chosen over Alternative A2 because students could purchase those foods a la carte at any time but the alternative would promote limited fat and sugar intake. An advocacy organization suggested that the exemption should apply only to entrees on the same day they are served in the school meals program, and a State department of education agreed that sales should be limited to the day of service. A trade association supported Alternative A1, as long as the exemptions for foods that are naturally higher in fat, such as soy nuts, are exempted in this requirement as well. A school food service company suggested that Alternative A1 would allow greater options for students and provide food service staff to better utilize the products offered, all while maintaining the HFFKA competitive food standards.

**9.3. Support Alternative A2 - NSLP/SBP entrees and side dishes (except grain-based dessert products) sold a la carte would be exempt from all competitive foods standards**

Approximately 935 submissions expressed support for Alternative A2. Numerous commenters, including State departments of education, school food service staff members, trade associations, advocacy organizations, a school food service company, a nutrition professional, and individual commenters, expressed support for Alternative A2. A State department of education stated that Alternative A2 would allow food service operators to serve all items offered during breakfast and lunch service without being concerned about modifying the menu items. Another State department of education and an individual commenter stated that they prefer Alternative A2 because it provides flexibility to SFAs. Two professional associations and an individual commenter supported Alternative A2 stating that it would provide a positive message about healthy foods. A food manufacturer stated that they support Alternative A2 because it is most similar to the HUSSC guidelines. Further, a school district and an individual commenter recommended the implementation of Alternative A2 suggesting it will provide consistency between the a la carte and reimbursable meal requirements. Several of the commenters supporting Alternative A2, including trade associations and food manufacturer, did so with the recommendation that there are no timing restrictions for service.

Some commenters, including a school food service company, suggested that not allowing the service of NSLP and SBP entrees and side items would send a confusing message that particular foods are healthful when they are part of a meal, but not when they are sold separately. Other commenters, including a State department of education and an individual commenter, stated that although certain food items, by themselves, may exceed the fat and sugar limits imposed by Alternative A1, those foods may be allowed under Alternative A2 because they are averaged into the total weekly offerings allowed by the NSLP and SBP. Another State department of education emphasized that the NSLP/SBP meal items have already met the meal pattern criteria and have been specifically planned to meet requirements over the course of the school week, so this approach supports the idea that the school meal entrees and side dishes are healthy items.

A few of the commenters pointed out that Alternative A1 seemed confusing, in part because it would limit sugar and fat but not sodium and calories. A food manufacturer argued that because reimbursable meals should be the primary source of foods and beverages for students, food items that are part of the reimbursable meal should not be restricted outside of the reimbursable meal. A trade association supported the alignment of the standards for competitive foods and reimbursable foods. A State department of education expressing support for Alternative A2 expressed the belief that the provision that menu items would have to be served in the same or smaller portion sizes as in the NSLP or SBP would assure reasonable calorie and fat limits. An advocacy organization commented that Alternative A2 is consistent with the HRFKA requirement that USDA consider the “practical application of the nutrition standards” when establishing competitive food standards.

**9.3.1. Support Alternative B1 - Allow an exemption to the nutrient standards for competitive foods for NSLP/SBP menu items on the same day that the items were served in the school meals program**

Approximately 40 submissions expressed support for Alternative B1. Some of these commenters include food service industry commenter, a State department of education, a State department of agriculture, a teacher, a U.S. Senator, and advocacy groups. Several commenters, including a trade association, suggested that Alternative B1 would offer consistency between the a la carte meal offerings and the NSLP meal offered the same day. An advocacy organization recommended that to ease product management and costs related to food waste, Alternative B1 would allow foods to be sold one day after they are offered as a menu item in the meal program. Some commenters that supported Alternative B1, including

a school food service company and an individual commenter, suggested that under Alternative B2, a menu item high in calories or fat served on Monday could then be offered as an a la carte item for the rest of the week, which the commenter suggested would be inconsistent with the intent of the competitive food requirements. A State department of education commented that if USDA chooses to exempt NSLP and SBP items, Alternative B1 would be preferable to Alternative B2. A professional association specifically mentioned the elimination, under Alternative A2B1, of grain-based dessert products that do not meet the proposed nutrition standards.

### **9.3.2. Support Alternative B2 - Allow an exemption to the nutrient standards for competitive foods for NSLP/SBP menu items served within 4 operating days of service in the programs**

Approximately 80 submissions expressed support for Alternative B2. A State department of education suggested that Alternative B2 would provide flexibility to schools. Similarly, a school food service staff member commented that the alternative would allow the most flexibility to menu planners whereas a State department of education stated that Alternative B2 would allow flexibility to SFAs. A trade association argued that Alternative B2, combined with Alternative A2 would be easier to implement for nutrition authorities and companies because it would provide consistency between the a la carte and reimbursable meal program. A school food service staff member commented that Alternative B2 would help reduce food waste by allowing 4 days within which to use leftovers. State departments of education requested that the final rule clarify whether the items can be served every day in the designated 4 operating days or only once in the 4-day period. Lastly, a food manufacturer supporting Alternatives A2 and B2 suggested that Alternative A2 is similar to the HUSSC guidelines.

### **9.3.3. Other comments on frequency of allowable sale of NSLP/SBP menu items**

Approximately 960 substantive submissions addressed how the competitive food requirements should treat the frequency of allowable a la carte sale of NSLP/SBP menu items. Many of the commenters, including food service staff members, school districts, State government agencies, food manufacturers, food service industry stakeholders, advocacy organizations, trade and professional associations, nutrition professionals, and individual commenters, expressed the view that there should be no frequency restrictions on the a la carte sale of NSLP/SBP menu items. These commenters argued that an item has the same nutrition no matter what day it is served, and a frequency restriction would require tracking when items are prepared for NSLP/SBP menus, such that inventory control, food costs, and maintaining student participation would be made more complex. A trade association and a food manufacturer commented that serving popular menu items a la carte allows schools to maintain student participation and revenue on days that less popular items are served. A professional association suggested that any item that meets the NSLP/SBP meal pattern guidelines should be allowed for sale at any time in school cafeterias. A State department of education asserted that compliance with the meal pattern would ensure students are consuming nutritious foods whereas allowing only non-NSLP/SBP foods on the a la carte line would send a negative view of school meals.

An advocacy organization and a State department of education recommended that Alternative B1 should be broadened to allow an exemption on the same day and the following day after menu items were served in the school meals program to help school districts manage product inventory and reduce food waste. Some advocacy organizations opposed exemptions for NSLP/SBP menu items served a la carte, but they stated that if USDA decided to allow exemptions, they should be limited to the day the item is served or the day of and the day after service as part of the NSLP or SBP program. A U.S. Senator and an individual commenter stated that they would support serving items the next day, but not 4 days later.

A trade association agreed that if limited exemptions from the competitive food requirements for NSLP/SBP menu items served a la carte are provided, then limiting the number of days the entrée or side

dish is served is one option. Another State department of education expressed a preference for Alternative A2, but recommended allowing grain-based desserts for consistency. This commenter also asked whether leftovers used in a recipe, such as soup or salad, on the following day would be considered a new menu item. Other commenters, including trade associations, commented that grain-based desserts are allowed to be offered twice a week as part of the reimbursable meals program, and stated that requirements for competitive foods should be consistent.

#### **9.4. Support for some other proposal for NSLP/SBP entrees and side dishes sold a la carte**

In addition to the comments that no NSLP/SBP items should be exempt (summarized in section 9.4.1 below) and the comments that all NSLP/SBP items should be exempt (summarized in section 9.4.2 below), some comments contained other suggestions regarding the applicability of the competitive food standards to NSLP/SBP menu items sold a la carte. Approximately 55 submissions included comments containing these other suggestions. For example, a State department of education recommended that Alternative A2 be modified so that it would apply only to NSLP/SBP entrees, rather than to all NSLP/SBP food items. This commenter further recommended that if a NSLP/SBP entrée item is also sold a la carte on the same day, then it must have the same calories and portion size, but would not need to meet any additional nutrition standards.

A health care association, advocacy organizations, and a State department of education expressed a preference for a requirement that NSLP/SBP items sold a la carte must meet sugar, fat, and sodium standards and that a la carte service of those items would be restricted to the day the item is served or the following day. Some advocacy organizations also recommended that competitive food sodium standards be met by NSLP/SBP items sold a la carte, including a phased approach to sodium reduction.

##### **9.4.1. Suggestion that no NSLP/SBP entree or side item should receive an exemption from any competitive food standards**

Approximately 209,770 submissions, including mass mail campaigns, suggested that all NSLP/SBP menu items sold a la carte should have to meet all competitive food standards. Numerous commenters, including advocacy organizations, State government agencies, an academic institution, trade associations, professional organizations, school districts, school food service staff members, and other individuals, suggested that no NSLP/SBP entrée or side item should receive an exemption from any competitive food standard. Many of these commenters, including advocacy organizations, health care associations, and individual commenters, suggested that allowing exemptions from the competitive food standards for NSLP/SBP entrée or side items sold a la carte would introduce “loopholes” for items sold in a la carte lines. Several commenters asserted that school meals are designed by school nutrition service professionals to contain items that, when served together, create a balanced meal that includes key nutrients while controlling for calories, fats, sugars, and sodium. They argued that when items from a meal are sold individually, students get the negative nutrition components, such as sodium or sugars, without getting the positive nutrients from the rest of the planned components of the meal. Furthermore, some commenters, including health care associations and advocacy organizations, stated that when students purchase meals from an a la carte line, they can buy more than one item. Given the access that students have to a la carte options, commenters warned that the exemptions would undermine the integrity of the competitive food standards, the impact of the meal program standards, and the efforts of parents to provide healthy food options for children. Some of the commenters, including advocacy organizations, also stated that the language of the HHSFKA requires that all foods sold outside of meals must meet the national nutrition standards.

**9.4.2. Suggestion that all NSLP/SBP entree and side items should be exempt from all competitive food standards**

Approximately 740 substantive submissions supported a suggestion that all NSLP/SBP entrée and side items sold a la carte should be exempt from all competitive food standards. Many of these commenters, including a State department of education, school districts, food service staff members, nutrition professionals, food manufacturers, food service companies, a professional association, and individual commenters, suggested that any product that can be used as part of a reimbursable meal should be able to be sold as a competitive food without any restrictions. Some commenters, including food manufacturers, specifically opposed restrictions on fat, sugar, sodium, and frequency of allowable sale of NSLP/SBP menu items, which these commenters asserted would decrease flexibility and increase food costs for schools. Some commenters, including food manufacturers, a school food service company, individual commenters, and school food service staff members, provided more detailed arguments supporting the idea that because foods in reimbursable meals have already been determined to be a nutritious part of a school meal, they should not be subjected to a second set of nutrition standards in order to be served in the a la carte line, snack bar, vending machines, or school store. These commenters argued that a complete exemption from competitive food standards for NSLP/SBP menu items would encourage reimbursable meals program foods as the main source of nutrition served in schools, facilitate the sale of foods by the SFAs, maintain or increase student participation in the meal program, and allow the food industry to meet a single set of standards for products. A few commenters, including food manufacturers and individual commenters, claimed that the IOM, Alliance for a Healthier Generation, and HUSSC recommendations or guidelines for competitive foods all exempt reimbursable foods served a la carte, with no restrictions on frequency or nutritional requirements. A food manufacturer commented that there is no scientific basis or justification for separate standards, which it asserted would lead to inconsistency and confusion.

**9.5. Other comments on NSLP/SBP entrees and side dishes sold a la carte**

Approximately 140 substantive submissions provided other comments regarding the a la carte sale of NSLP/SBP entrees and side dishes. In an effort to encourage schools to provide a reimbursable meal with an entrée, a State department of education recommended that entrée items sold only a la carte should be required to meet fat, sugar, and sodium standards. This commenter also requested clarification about specific foods considered to be “grain-based desserts,” because items such as muffins may be high in fat and sugar. A school food service staff member, however, suggested that NSLP/SBP entrees and sides should not be subject to sodium and calorie limits, claiming the requirement would be a burden for menu planners. A State department of agriculture and a food manufacturer cautioned against placing a higher standard on “grain-based” desserts suggesting that many “grain-based” desserts may be unfairly restricted and other, less healthful foods containing sugar and fat, would not. A school district opposed any part of the proposal that would limit the ability to sell a la carte items that are not part of the reimbursable meal because those limits could result in fewer dollars in sales and affect the school system’s buying power. Another school district recommended that fruit and vegetable sides be considered as side dishes. A school district emphasized that leftovers should not be a focus of the proposed rule. A trade association argued that if an item is acceptable in the a la carte program, then it should be acceptable in vending machines and student stores. Another trade association asked whether NSLP/SBP entrees and side dishes sold in an a la carte line are considered to be snacks, a meal, or a meal component. A U.S. Senator recommended requiring NSLP/SBP items offered a la carte to meet nutrition standards for fat, sugar, and sodium, to be consistent with the Child Nutrition Act of 1966 and the Richard B. Russell National School Lunch Act. An individual commenter expressed the opinion that a la carte choices are important for high school students who may not get enough food from the meal pattern offerings. A trade association recommended an additional requirement that when an NSLP/SBP entrée is offered a la carte, the accompanying fruit or vegetable side dish should also be offered in the a la carte line.

## **10. Caffeine**

### **10.1. Elementary and Middle School: foods and beverages must be caffeine-free**

#### **10.1.1. Support proposed caffeine restrictions for elementary/middle schools**

Approximately 350 submissions supported the proposed restrictions on caffeine for competitive food and beverages sold in elementary and middle schools. Generally, these commenters agreed that prohibiting caffeine in elementary and middle school would be beneficial for children's health. Several commenters, including school food service staff members, food service industry commenters, advocacy organizations, professional associations, individual commenters, and health care associations, cited a variety of children's health concerns as reasons for removing access to caffeine in elementary and middle schools. These commenters argued that children who consume caffeine can develop dependence, lose sleep, have reduced performance in school, and have negative developmental and other physiological impacts. Several of these submissions also commented that the 2007 IOM report recommended that school foods and beverages be caffeine free. Many comments stated that children are still growing and developing physiologically and are therefore more likely to be negatively affected by caffeine than adults. A number of commenters, including advocacy organizations, also highlighted their particular concern over the growing popularity and consumption of energy drinks, which typically contain higher quantities of caffeine than sodas and therefore can have increased negative effects compared to other caffeine-containing products. Some commenters noted that trace amounts of naturally occurring caffeine should be allowed.

#### **10.1.2. Caffeine standard for elementary/middle schools should be less restrictive (i.e., should allow some caffeine)**

Approximately 120 submissions suggested that caffeine standards for elementary and middle schools should be less restrictive. Generally these commenters suggested less restrictive caffeine standards for elementary and middle schools for reasons of implementation. Some commenters, including professional associations and a school food service staff member, asserted that there would be difficulties in implementing the caffeine restrictions with the NSLP grade designations. Other commenters suggested that there should be no caffeine restriction for secondary schools, grades 6 through 12, in order to eliminate issues of implementation and monitoring the various caffeine restrictions.

One school food service staff member suggested that a definition is needed to determine what counts as naturally occurring caffeine, and stated that having a specific definition would clarify questions about products such as diet teas.

#### **10.1.3. Other**

One submission remarked on other aspects of the proposed caffeine restrictions in elementary and middle schools. A trade association commented that some flavoring substances may provide minute levels of caffeine in otherwise allowed beverages, and recommended that the final rule make clear that these products are still allowed as competitive beverages in elementary and middle schools. This commenter also requested clarification of the phrase "trace amounts" in the context of "foods and beverages available to elementary and middle school-aged students shall be caffeine-free, with the exception of trace amounts of naturally occurring caffeine substances."



## **10.2. High School: no caffeine restrictions**

### **10.2.1. Agree that high schools should have no caffeine restriction**

Approximately 430 submissions expressed support for not limiting caffeine in high schools. A school food service staff member and a school district commented that allowing caffeine in high schools is realistic given that many students already choose to bring coffee or other caffeinated beverages into school. A few commenters, including a trade association, remarked that they approve of allowing caffeine in high schools because caffeine has been reviewed and studied extensively and found to not cause negative health effects by the FDA. Other commenters, including a professional association, supported the allowance for caffeinated beverages in high schools but suggested that additional studies are needed to continue evaluating the health effects of caffeine. A school food service staff member and a professional association noted that additional guidance would be necessary to limit the access of non-high school students in blended buildings housing students from both middle and high school.

### **10.2.2. Oppose (e.g., standards should include some restriction on caffeine for competitive foods sold to high school students)**

Approximately 75 submissions expressed their opposition to the proposed lack of caffeine restrictions in competitive foods and beverages sold to high school students. These commenters generally argued that caffeine has negative health consequences for high school-aged children and that disallowing caffeine in high schools would be consistent with the current understanding of the negative effects of caffeine.

A number of commenters, including advocacy organizations, a State department of education, school food service staff members, a food service industry commenter, professional associations, individual commenters, and health care associations, argued that the lack of caffeine restrictions on competitive foods and beverages sold in high schools in the proposed rule is undesirable for a number of reasons. These commenters stated that caffeine can have a variety of negative health effects. The comments highlighted that the proposed allowance of caffeine in high schools is not consistent with recommendations made by the IOM and other expert bodies that have advised against high school children consuming caffeine. The commenters also stated that there is no scientific rationale for considering caffeine safe for high school children and asserted that the availability of caffeine in high schools would likely lead to overconsumption of caffeine by high school students when considering their access to caffeine-containing products outside of school.

A State department of education suggested that schools should prohibit caffeine on campus because they should be modeling healthy nutrition habits, even if students are able to acquire the caffeinated products off campus. An advocacy organization also indicated its preference for better caffeine labeling on foods and beverages sold in schools.

Some commenters suggested that caffeine should be allowed in high school beverages in situations in which it is naturally occurring. For example, some school food service staff members commented that beverages such as coffee and tea should be allowed but products with added caffeine should not be allowed.

A number of commenters, including, the food industry, a county public health department, and individual commenters, suggested that caffeine-containing beverages should be allowed in high schools but should have their caffeine content limited. An advocacy organization favored some limitation of caffeine-containing products in high schools pending further developments in the study of caffeine's health effects.

### **10.2.3. Other**

Approximately 15 submissions submitted other comments related to caffeine in high schools. A school food service staff member and a State department of education specifically cited energy drinks as products that contain very high levels of caffeine and which should be prohibited in high schools. A class commented that allowing caffeinated beverages is important to some school stores run by students, such as coffee shops. They noted that for some students this type of beverage-preparation and food service training is important. A professional association remarked that restricting caffeine in high schools in the final rule would be unrealistic in terms of management, implementation, and oversight. A State department of education requested a clearer definition and/or examples of the types of caffeinated beverages that would be allowed in high schools.

### **10.3. Suggestions for exemption from caffeine restriction (e.g., chocolate milk)**

Approximately eight submissions suggested potential exemptions from the caffeine restrictions in schools. Some commenters, including a food service industry commenter, trade associations, and an individual commenter, requested that chocolate milk be specifically exempted from the caffeine restriction in the final rule. These commenters remarked that substances such as cocoa in chocolate milk can contain small amounts of caffeine and suggested that this should be accounted for and allowable in the final rule. A trade association commented that cocoa powder contains a small amount of naturally-occurring caffeine, but that this is variable based on the source of cocoa as well as the processing that the cocoa has been subjected to.

### **10.4. Other comments about caffeine restrictions/allowances (e.g., comments on natural or trace amounts of caffeine not otherwise coded above)**

Approximately 810 submissions addressed the proposed competitive food caffeine restrictions or allowances in ways not addressed in previous sections. Some commenters, including State departments of education, a professional association, school food service staff members, and a school food service company, requested clarification on how the rule would be implemented in schools in which elementary, middle, and high school students are blended. These commenters stated that there is insufficient guidance on how to meet the caffeine requirements for each school type. Some of these commenters also remarked that implementing the caffeine requirements in blended schools, so that high school students could have caffeinated products and middle school students could not, would be perceived as inequitable by students.

A trade association discussed the beneficial characteristics of tea, a product which contains caffeine. This commenter stated that tea products can also be decaffeinated if they are disallowed in schools in caffeinated form. Other commenters, including a State department of education and a trade association, requested a definition of the term "trace amounts of naturally occurring caffeine." These commenters noted that the trace amounts of caffeine can vary in food additives based on processing and other characteristics of the products and is difficult to determine.

A school food service staff member and a State department of education expressed concerns about energy drinks, particularly how their consumption would be monitored with vending machine sales. Some commenters, including advocacy organizations, suggested that that limits should be set on caffeine content in beverages pending further research and understanding of the potential health effects of caffeine consumption.

## **11. Beverage requirements**

### **11.1. General support**

Approximately 10,590 submissions, including mass mail campaigns, expressed general support for the proposed competitive beverage requirements. Many commenters, including a health care association, a consulting company, advocacy organizations, professional associations, a county public health department, and individual commenters, agreed that full calorie and sugar-sweetened drinks should not be available for sale in schools. A few advocacy organizations, a professional association, and individual commenters, expressed strong support for the proposal to eliminate diet and low-calorie beverages in elementary and middle schools, but a broader range of choices for high school students. A health care association, a school district, a county public health department, and individual commenters, opposed any exemption for juices with added sweeteners. An advocacy organization and a trade association supported the standards for milk because they were the same as the standards for the reimbursable school meal programs. A city public health department and an advocacy organization commented that allowable beverages, other than water, should have standard serving sizes and specified calorie limits.

### **11.2. General opposition**

Approximately 55 submissions generally opposed the proposed competitive beverage requirements. A few commenters, including a trade association and a school food service company, opposed the fact that the proposed rule had different requirements for elementary, middle, and high school, because some buildings have mixed grade levels or because the rules, in their estimation, should only apply to elementary schools. A State Governor, U.S. Senators, and a State department of education suggested that the rule should do more to encourage milk consumption, including giving local school districts the option to serve types of milk not listed in the rule. An individual commenter encouraged allowing carbonated flavored water, which would benefit lactose-intolerant children without the calories of fruit juice. A beverage manufacturer opposed the fact that only milk, water, and 100% fruit juice would be allowed for elementary and middle schools, and a school district expressed concern that the proposed competitive beverage requirements were too restrictive. Individual commenters and school food service staff members argued that restrictions on beverages could decrease sales for school food service programs and some beverage companies.

### **11.3. Portion sizes**

#### **11.3.1. Support proposed portion sizes**

Approximately 15 submissions supported the proposed portion sizes for competitive beverages. Some commenters, including advocacy organizations, trade associations, a State department of education, a State department of health, a beverage industry commenter, and individual commenters, generally supported the proposed standards for milk, juice, and water and specifically expressed support for the proposed portion sizes for elementary, middle, and high schools. A school food service staff member expressed particular support for the proposed 8-ounce limit on juice because their State only allows 4 ounce servings of juice. A group of nutrition professionals stated that the proposed portions would allow for flexibility with current packaging practices. A trade association specifically supported the portion sizes for 100% juice. A food and beverage manufacturer strongly supported the major elements of the proposed beverage standards and agreed that portion sizes should be age appropriate and operationally practical.

### **11.3.2. Proposed portion sizes should be bigger**

Approximately eight submissions suggested that the proposed portion sizes should be bigger. A few commenters, including a food service director, a professional association, and a nutrition professional, favored an increase to 16 ounces, particularly for low fat and nonfat milk. These commenters claimed that the 16-ounce container is the most common size purchased, especially at the high school level.

### **11.3.3. Proposed portion sizes should be smaller**

Approximately three submissions suggested that the proposed portion sizes should be smaller. An individual commenter encouraged USDA to limit juice to 8 ounces a day. An academic commenter favored reducing serving sizes of juices to 4 ounces in elementary schools to be consistent with IOM recommendations, and a State department of agriculture recommended a limit of 4 ounces of juice for all age groups.

### **11.3.4. Elementary schools (up to 8oz portions)**

#### **11.3.4.1. Support**

Approximately 420 submissions supported the proposed elementary school portion size. Several commenters, including a professional association, a State department of education, food service industry commenters, school districts, school food service staff members, a nutrition professional, and individual commenters, simply stated that they agreed with the 8-ounce portion size for elementary schools. A professional association supported the proposed portion size for elementary school and suggested that plain or flavored nonfat milk be limited to 130 calories per 8 fluid ounces. For nonfat milk, a State department of health favored a limit of 22 grams of sugar per 8 fluid ounces. An advocacy organization agreed with a 130 calorie limit for both low fat and nonfat milk to avoid serving flavored milk with added sugar. This commenter also recommended a limit of 120 calories per 8 fluid ounces for juice and suggested that schools offer juice diluted with water to control calorie intake. A trade association stated that juice is a sufficient alternative to offering whole fruit because 8 fluid ounces of 100% juice is equivalent to one cup of fruit or vegetable.

#### **11.3.4.2. Oppose**

One submission opposed the proposed portion size for elementary schools. An individual commenter suggested that the portion size for juice should be 12 ounces for all grade levels.

#### **11.3.4.3 Other**

One submission included other comments regarding the proposed portion size for competitive beverages sold in elementary schools. A State department of education commented that the proposed portions sizes for elementary school and middle school students may be difficult to implement for schools that serve mixed grade levels in the same cafeteria.

### **11.3.5. Middle and high schools (up to 12oz portions)**

#### **11.3.5.1 Support**

Approximately 10 submissions supported the proposed middle and high school portion size for competitive beverages. Some commenters, including a State department of education, a trade association, school food service staff members, and nutrition professionals, simply agreed with the 12-ounce portion

size for middle schools. A nutrition professional suggested that they are unaware of milk sold in 12-ounce containers. As they did for elementary schools, a State department of health favored a limit of 22 grams of sugar per 8 fluid ounces for nonfat milk. A health care association, a State department of health, and an advocacy organization suggested that the calorie limit for 8 ounces be 130 calories so as to limit the sugar intake of milk drinkers. An advocacy organization recommended a limit of 120 calories per 8 fluid ounces for juice and suggested allowing schools to serve 100% juice diluted with water, as a way to further reduce calorie intake. A trade association suggested the proposed 12-ounce portion size for juice for middle and high school students is more practical than other commenters' interpretation of the 10 ounces suggested by certain guidelines.

### **11.3.5.2 Oppose**

Seven submissions expressed general opposition to the proposed portion size for middle and high schools. An individual commenter suggested that the same standard be applied to all grade levels. Another individual commenter opposed the proposed standard stating that the standards would allow for diet and low-calorie sodas to be sold on campus any time that a meal is not being served.

### **11.3.5.3 Other**

Approximately 10 submissions further addressed the proposed middle and high school portion size for competitive beverages. A few commenters, including a trade association, specifically expressed support for the proposed elementary and middle school requirements, but not the proposed high school requirements. An individual commenter requested that the standards be consistent with the NSLP standards. An academic commenter urged limiting flavored milk to 8 ounces, and a school district recommended that all milk be limited to 8 ounces to be consistent with MyPlate recommendations and because larger serving sizes of flavored milk could lead to overconsumption of calories.

A school district suggested that USDA offer 20-ounce beverages with zero calories (including flavored carbonated water) and 16 ounces of low-fat or fat-free milk.

### **11.3.6. Other comments about proposed proportion sizes**

Approximately 210 submissions provided other comments about the proposed portion sizes for competitive beverages. A health care association and an advocacy organization encouraged USDA to allow carbonated water, with no portion size limit, to be sold in elementary and middle schools. A professional association indicated that it would support allowing 16 ounces of low-fat milk or flavored nonfat milk so as to encourage the consumption of milk in their schools. A school food service company commented that milk sizes should not be limited and asserted that many milk bottlers do not offer a 12 ounce milk product. A trade association commented that varying grade levels should be offered different beverage portion sizes because students of different ages have different nutritional needs. A school food service staff member requested clarification regarding the proposed standard serving size for milk that is offered a la carte.

### **11.4. Additional high school beverages (beyond water, low fat/non-fat milk, 100% juices)**

#### **11.4.1. 20oz servings or less for calorie-free, flavored and/or unflavored carbonated water and other calorie-free beverages that comply with FDA standards of < 5 cal/serving**

##### **11.4.1.1. Support**

Approximately 25 submissions supported the proposed provision that would allow calorie-free beverages in high schools. Several commenters, including trade associations, advocacy organizations, professional

associations, State government agencies, a school district, and a health care professional, expressed support for the following: eliminating full-calorie soda and other sugary drinks in high schools, allowing 20-ounce servings of calorie-free beverages in high schools, and allowing diet soda and calorie-free, flavored carbonated beverages in high schools. A beverage trade association commented that flavored, carbonated water would provide students with a choice of beverages that would provide needed hydration and minimize calorie intake. This commenter expressed support for USDA's approach to providing high school students with a broader range of healthier beverages.

#### **11.4.1.2 Permissible serving size for calorie-free beverages should be less than 20oz**

Approximately four submissions suggested that the proposed serving size for calorie-free beverages in high schools should be less. A nutrition professional opposed the 20 ounce limit and argued that if students consume large amounts of fluids during the school day there is potential for a reduction in appetite, which could lead to a reduction in the amount of nutrient-dense foods consumed during meal times. A health care association expressed opposition to the permissible serving size for calorie-free beverages suggesting that it would permit calorie-free beverages to be sold in high schools without restriction. This commenter argued that carbonation and acids from these beverages may damage tooth enamel and weaken the integrity of hard tissue. An individual commenter suggested that allowing 20 ounce containers of diet soda would encourage the consumption of phosphate, which the commenter claims, interferes with the absorption of calcium. This commenter suggested that soda in schools be limited to 12 ounces per container and only be sold during evening and weekend events. A nutrition professional opposed allowing diet, carbonated beverages in schools explaining that some schools currently do not allow diet soda or carbonated beverages, so the proposed rule would introduce these beverages into students' diets.

#### **11.4.1.3 Permissible serving size for calorie-free beverages should be greater than 20oz**

One commenter suggested a larger permissible serving size for calorie-free beverages in high schools. A school food service staff member suggested that the proposed serving size should be 24 ounces instead of the proposed 20 ounces. This commenter recommended allowing a limit of 24 ounces because popular beverage products sold at their school are 700 milliliter containers of unflavored water and a sports drink, the revenue of which helps support the school food service operations.

#### **11.4.1.4 Other**

Approximately 45 submissions provided other comments about the proposed provisions for calorie-free beverages in high schools. A professional association and an academic commenter recommended having a consistent beverage standard through the grade levels. A trade association and a food industry commenter suggested including unsweetened, decaffeinated iced teas to the list of allowable beverages in high schools.

A State department of education and a large city government suggested that USDA specifically prohibit caffeinated, carbonated, or non-nutritive, artificially sweetened beverages in schools. A school food service staff member and an individual commenter were particularly concerned about the possible harmful effects of artificial sweeteners. Many commenters including advocacy organizations, State departments of education, school districts, school food service staff members, nutrition professionals, and individual commenters, mentioned their opposition to the sale of diet sodas and other diet drinks in schools, even if such drinks meet the criteria for a calorie-free beverage. An advocacy organization stated that some States have successfully eliminated sodas from schools and suggested that although diet beverages contain fewer calories, they have not been proven to contribute to weight control or a healthy diet.

An individual commenter suggested that introducing high school students to beverages like caffeinated, or non-caffeinated low-calorie or no-calorie beverages, after encouraging healthy beverage consumption in elementary and middle school, would potentially guide students off of their healthy habits. Trade associations suggested that the standard for other calorie-free beverages be changed so that they are labeled to contain no more than “5 calories per 8 fluid ounces or less than or equal to 10 calories per 20 fluid ounces,” in order to maintain consistent, easy to implement treatment of beverages and tie the calorie threshold to labeled calories. These commenters argued that under the proposed requirement, FDA rounding rules and labeling by beverage manufacturers could lead to inconsistent results for products with identical calorie profiles. In addition, these commenters recommended that the provision simply refer to 20 fluid ounces, rather than “20 fluid ounce servings.”

#### **11.4.2. Low calorie beverages (≤ 12oz servings only)**

##### **11.4.2.1. Support Alternative D1: ≤ 40 cal/8 ounce serving (or ≤ 60 cal/12ounce serving)**

Approximately 30 submissions expressed support for Alternative D1 as a standard for low-calorie competitive beverages in high schools. Some commenters, including State departments of education, a State department of agriculture, health care and professional associations, a consulting company, and advocacy organizations, expressed support without providing a detailed rationale.

A professional association and a consulting company commented that allowing low-calorie beverages can help meet calorie goals, prevent excess weight gain, and support weight reduction for certain age groups. A State department of agriculture expressed the view that this alternative would ensure that students have familiar beverage choices and would be consistent with existing Federal regulations. Other commenters, including a State department of education, a professional association, a health care association, and an advocacy organization, suggested that because these beverages contain added sugar and little nutritional value, the lower calorie standard should be used. A State department of education and an advocacy organization commented that sports drinks that would be allowed under Alternative D2 are not recommended for those that do not participate in arduous physical activity and are not needed for students participating in routine physical activity. Another State department of education commented that some higher calorie sports drinks might not meet a higher standard but that members of the food industry would change their formulations for the products to reduce calories.

##### **11.4.2.2. Support Alternative D2: ≤ 50 cal/8 ounce serving (or ≤ 75 cal/12ounce serving)**

Approximately 530 submissions supported Alternative D2 as a standard for low-calorie competitive beverages in high schools. Several commenters, including, State departments of education, trade associations, professional associations, members of the food and food service industry, school districts, school food service staff members, and individual commenters, expressed support without providing a detailed rationale.

A food and beverage manufacturers favored the alternative because it would include many sports drinks that replenish electrolytes, allowing students to meet their hydration needs within reasonable calorie limits. A State department of education suggested that Alternative D2 would mean greater flexibility and sales for school food services. An individual commenter stated that Alternative D2 it would be consistent with FDA standards. A State department of education chose Alternative D2 but expressed the concern that either alternative would promote the use of non-nutritive sweeteners.

#### **11.4.2.3. Support some other restriction for low calorie beverages in high school**

Approximately 163,600 submissions, including a mass mail campaign, included suggestions for alternative restrictions for low-calorie competitive beverages sold in high schools. One professional association recommended that no additional high school beverage choices be offered. Several commenters, including advocacy organizations, health care associations, and U.S. Senator, suggested a limit of 40 calories “per container” because such a standard would result in calories being kept to the 40 calorie maximum regardless of portion size. A large city government recommended a limit of 25 calories per 8 ounces. A few commenters, including a food and beverage manufacturer, a professional association, and a trade association, suggested they would modify Alternative D2 to allow 80 calories per 12 ounce serving, to account for FDA rounding rules. A school district recommended 120 calories per 8 ounces to accommodate 100% juice that does not contain non-nutritive sweeteners. A food industry commenter proposed an alternative that would allow other drinks with up to 66 calories per 8 ounces, which this commenter asserted would allow more flexibility and lower calories for 100% juice products. This commenter pointed out that 100% juice and water combinations could be used to meet the calorie criteria.

A few commenters, including nutrition professionals and advocacy organizations, urged that sports drinks not be offered in schools, or at least limiting them to student athletes in training settings, stating that these beverages contribute to excess calorie consumption and are not needed for hydration. A health care association warned against the oral health dangers associated with consuming carbonated or beverages containing acids, like sport drinks. A professional association urged USDA to exclude full-calorie sport drinks from schools because of their sugar content. A consulting firm, advocacy organizations, a professional association, and an individual commenter suggested that USDA not allow sports drinks in high schools, citing conclusions of the IOM and the Academy of Pediatric that the commenter understood as stating sports drinks are unnecessary for students participating in routine physical activity.

#### **11.4.2.4. Serving greater than 12oz should be permitted**

Approximately eight submissions supported a larger serving size than the proposed 12 ounces for low-calorie beverages sold in high schools. A few school districts and school food service staff members wanted the ability to serve low-calorie beverages in 20 ounce sizes. A school food service staff member suggested that the serving size be increased to 20 ounces for low-calorie options and 24 ounces for no-calorie beverages. Another school food service staff member commented that current milk packaging reflects 8 ounces and 16 ounces. A trade association suggested serving sizes up to 20 ounces for zero-calorie beverages and up to 16 ounces for all other beverages. A State department of education questioned whether 12 ounce beverages would be available and if they could be used in dispensing machines.

#### **11.4.2.5. Other comments about low calorie beverages**

Approximately 140 submissions included other comments about low-calorie beverages. A few commenters, including school food service staff members and State departments of education, opposed both Alternatives D1 and D2. The State departments of education cited concerns of the long-term effects of consuming artificial sweeteners and asserted that the low-calorie beverages do not contribute to a healthy diet. A beverage manufacturer recommended that beverages have no more than 15 grams of sugar and 50 mg of sodium per 8 ounces and zero grams of fat. A few commenters, including an advocacy organization and an individual commenter, recommended that calorie limits on drinks other than milk and juice should be as close to zero as possible.



Several commenters, including a professional association, advocacy organizations, a school district, a nutrition professional, a State department of education, and individual commenters, urged that specific types of beverages be prohibited in high schools, including diet soft drinks, energy drinks, sports drinks, and those containing artificial sweeteners. A school food service staff member, however, favored allowing non-nutritive sweeteners in waters and sports drinks. A beverage trade association expressed the belief that expanding the scope of products allowed in the 12-ounce portion size in high schools would be appropriate and argued that offering a broad range of beverages would encourage students to stay on campus instead of leaving campus to purchase beverages. This commenter also suggested that the availability of alternative beverages could introduce students to other low-calorie beverages.

#### **11.4.3. Comments on not allowing sale of these additional beverages in the meal service area during the meal service period**

The All Foods NPRM proposed to prohibit the sale of low-calorie beverages in the meal service area during the meal service periods. Approximately 1,300 submissions provided comments regarding time or place restrictions for the sale of low-calorie beverages in high schools. Numerous commenters, including nutrition professionals, a trade association, a State department of education, and school food service staff members opposed the proposed restriction. Some of these commenters, including a State department of education, a beverage trade association, and school food service staff members, expressed concern about sending mixed messages to students regarding whether those types of beverages are a welcome addition to a healthy diet or not.

Further, some commenters, including a State department of education, advocacy organizations, professional associations, a beverage industry commenter, a health care association, and a trade association, expressed concern that restricting sale of these beverages would result in potential loss of revenue for the school nutrition programs. Several of these commenters, including advocacy organizations, a school district, and a professional association, stated that, consistent with HHFKA, the nutrition standards governing which beverages can be sold to students should be consistent throughout the school campus and throughout the school day. Other commenters, including a professional association, State departments of education, and a school food service company, asserted that if beverages are not available in the cafeteria, students will purchase them from vending machines outside the meal service area, so the school nutrition program would lose those sales. Several school food service staff members, a vending company owner, and a professional association commented that because for many school nutrition programs beverage sales provide much needed revenue, alternative beverages should be allowed at any location on campus. Two trade associations expressed concern regarding the implementation burden that food service personnel would face if they had to determine what constitutes a meal service area and meal service time in which low-calorie beverage sales would be prohibited. An individual commenter suggested that sales by the school nutrition programs outside the meal service area should be allowed during meal times. A few other individual commenters, however, agreed with the proposed restrictions on sales of certain beverages during meal service.

#### **11.4.4. There should not be any restrictions for competitive beverages sold in high schools**

Approximately 35 submissions suggested that no restrictions should be placed on competitive beverages sold in high schools. A nutrition professional emphasized that because high school students are viewed as young adults and encouraged to make educated decisions they should have more beverage options from which to choose. A student agreed that restrictions should apply to elementary and middle schools because of the need for school meals to replicate what parents would like children to consume. However, this commenter asserted that this reasoning does not apply to high school students because they have the freedom to buy whatever they like before school and bring it into the building to consume during the day. A nutrition professional suggested that the beverage restrictions in high school are too restrictive and

anticipated a financial impact on school revenue. An individual commenter suggested that the beverage restrictions would reduce the number of beverage options for students that do not like sugar-free or diet drinks.

#### **11.4.5. Other comments about beverages in high schools**

Approximately 33,830 submissions, including a mass mail campaign, provided other comments about beverages in high schools. A State department of education requested a clearer definition and/or examples of the types of carbonated beverages that would be allowed in high schools. A school district suggested that the size of the serving should be the only restriction for high school students. An advocacy organization, however, recommended that high school students not be exempted from any policies that restrict competitive foods or beverages. A beverage manufacturer and a trade association suggested that instead of listing specific beverages that cannot be offered, USDA should focus on the nutrition standards that need to be met. A nutrition professional urged that additional beverages be sold to high school students only after school and not during the school day. Some commenters, including advocacy organizations, a health care association, and a trade association recommended that 100% juice with added water should be allowed in high schools. An advocacy organization that expressed support for allowing additional beverage options in high school, suggested that other than milk and juice, all other beverages should have calories that are as close to zero as possible.

An individual commenter described the negative aspects of beverages containing artificial sweeteners, and expressed concern that a reduction in drinks containing sugar may result in more high school students consuming more beverages with artificial sweeteners. A State department of education also questioned that the proposed beverage provisions would allow artificial sweeteners for high school students. A few commenters, including trade associations, reiterated their approval of allowing the sale of sports drinks in high schools, which they suggested may generate significant revenue for schools and student groups. Other commenters, including a health care association, suggested that the calories in sports drinks are unnecessary.

A few commenters discussed caffeinated beverages in high school. An advocacy organization expressed concern regarding the allowance of energy drinks in high school, citing a group of experts who the commenter stated found that the caffeine levels in energy drinks may lead to adverse health and safety effects in students. A State department of education requested USDA provide a definition, or examples of, the caffeinated beverages that would be allowed in high schools to ensure that the interpretation of the standard is consistent across LEAs and States. Another State department of education stated that caffeinated drinks do not provide any nutritional benefit to students.

#### **11.5. Other comments about beverage requirements**

Approximately 510 submissions included other comments about competitive beverage standards. Some commenters argued that there is no health benefit to allowing caffeinated, carbonated beverages and/or artificial sweeteners, or commented that there are health concerns about diet drinks. A trade association suggested that zero and low-calorie beverages without caffeine be allowed in elementary and middle schools because some children with diabetes need a low-calorie, low-sugar alternative to fruit juice and milk. Two State departments of education recommended that FNS allow carbonated or non-carbonated juice-water combinations in middle and high schools to provide a variety of beverages without promoting drinks sweetened with non-nutritive sweeteners or sports drinks. A professional association and food and beverage manufacturer recommended that guidelines for 100% juice and milk availability for elementary and middle schools follow those standards already established by the Alliance for a Healthier Generation because schools and beverage manufacturers are already using these guidelines.

A trade association supported the fact that the proposed rule does not impose a cap on total sugars in each serving of milk, and asserted that because no such cap exists in the NSLP/SBP requirements, such a limit would impose a cost on schools because they would have to procure milk separately for a la carte or vending sales. Further, this commenter opposed the limitation of flavored milk to only nonfat varieties, arguing that many students are accustomed to consuming low-fat flavored milk, which has the same nutrients and a minimal difference in calories as nonfat milk. Moreover, this commenter claimed that total calories and total sugars in flavored milks have declined substantially in recent years as processors have re-formulated. An individual commenter, however, opposed the added sugars and calories in flavored milk. A health care association asked USDA to provide schools with the information necessary to select flavored milk that contains the lowest levels of added sugars. A few individual commenters suggested that non-dairy milks and yogurts should be required to be offered.

A few commenters, including a school district and individual commenters, recommended that sparkling/carbonated 100% juice should be explicitly permitted as a beverage in elementary and middle schools. Some individual commenters stated that carbonated 100% juice contains the same nutritional qualities as non-carbonated 100% juice. A few individual commenters warned about the dangers of fructose in fruit juice, flavored milk, and other drinks. Commenters, including advocacy organizations, urged that the sugar and calorie content in 100% juice products be strictly regulated. An individual commenter suggested that because 100% juices may still contain artificial ingredients, an alternative would be to allow only 100% natural juices.

A trade association, advocacy organizations, and health care associations, requested an expansion of the water category to include carbonation with no additives and no portion size limit in elementary and middle schools, arguing that carbonated water has the same nutritional content than non-carbonated water. These commenters also suggested that 100% juice and juice-water combinations be served in no more than 12 ounce portions for high school students. A State department of agriculture suggested that allowing carbonated water without additives or calories for all ages would be consistent with the DGA and claimed that such beverage would not compete with the consumption of milk. Two trade associations suggested that carbonated water with the addition of natural flavors other than sweeteners be allowed for all grades. An industry association supported that the rule would allow the purchase of bottled water in any size by students of any grade level, and commented that schools should always have the option to provide bottled water as appropriate to meet their needs (e.g., localities that do not have access to potable tap water, during drought usage restrictions, when a boil advisory is in effect).

A few commenters, including school food service staff members and individual commenters, requested that there be only requirements for elementary and secondary schools instead of elementary, middle, and high school. Another school food service staff member expressed concern that restrictions on beverages at the middle school level could lead to large numbers of students bringing soda to school.

Advocacy organizations and health care associations suggested that FNS change the term "plain water" in the proposed regulation to "water with no additives," and change the term "plain milk" to "unflavored milk," because "plain milk" does not have a legal definition and would be inconsistent with State and local policies that use the term "unflavored milk," and because the term "plain" may not be appealing to students. An academic commenter suggested that the only beverages that should be offered in schools are 100% juice, milk and water. Some commenters, including advocacy organizations, suggested that USDA clarify that "plain water" would include fluorinated water. A trade association and a professional association expressed support for allowing milk alternatives and urged USDA to clarify that fluid milk substitutions that exceed the limit for fat (35% of calories) are exempted if the fat is mostly unsaturated fat. A county public health department supported that the proposed standards would allow students who are lactose intolerant to have beverage options that are nutritionally equal to milk. A food industry commenter asserted that soymilk is an acceptable milk alternative in the NSLP standards, DGA, and

MyPlate guidelines, and urged USDA to include soymilk as an acceptable, nutritious competitive beverage option.

## **12. Accompaniments**

### **12.1. General support**

Approximately four submissions provided general support for the proposed requirements for accompaniments in the All Foods NPRM. An academic commenter, an advocacy organization, and an individual commenter, suggested that students should have limits on the amount of accompaniments they can add to food items in order to prevent over-consumption of fat and calories that are limited elsewhere in meal options.

### **12.2. General opposition**

Approximately eight submissions stated their general opposition to the proposed accompaniment requirements in the All Foods NPRM. These commenters generally remarked that the requirements for accompaniments would be difficult to implement with existing food standards, produce waste, and require extra labor. State departments of education, a food manufacturer, and individual commenters claimed that portion control for accompaniments would be cost-prohibitive. These commenters cited concerns that the requirements for accompaniments would be incompatible with the reimbursable meals standards. Some commenters also argued that the cost of accompaniments is already an adequate control on their provision in school food service. Several commenters remarked that the accompaniment requirements would be an additional burden on school food service personnel and could impose additional costs as well as creating more waste if pre-packaged accompaniments are not used by students.

### **12.3. Must be pre-portioned**

#### **12.3.1. Support**

One submission expressed support for the proposed requirement that accompaniments must be pre-portioned. This State department of education commented that although there are additional costs associated when purchasing pre-portioned accompaniments, it would assist in more accurately reflecting the nutritional content of foods as consumed by students and in reducing food waste. This commenter urged that this change should be implemented with education on appropriate portion sizes, as well as appropriate waste disposal.

#### **12.3.2. Oppose**

Approximately 1,180 submissions opposed the requirement that accompaniments must be pre-portioned. These commenters generally cited concerns of cost, implementation, and waste as primary reasons not to require that accompaniments be pre-portioned.

Numerous commenters, including school districts, school food service staff members, advocacy or organizations, professional associations, a school food service company, and a State department of education, argued that the requirement to pre-portion accompaniments would increase costs. Some of these commenters stated that accompaniments are often bought in bulk and provided to students from bulk dispensers. These commenters asserted that if schools were required to provide pre-portioned accompaniments, they would either have to purchase more expensive pre-portioned products or separate bulk products into smaller quantities at greater expense of time and labor. A few of these commenters also argued that condiments and the like are already limited through production records and for cost and

calorie reasons and pointed out that these limiting mechanisms already work within the NSLP/SBP. Many of these commenters suggested that rather than pre-portioning all accompaniments, they should be included in the nutrient profile of the food item in quantities that students typically use.

Several commenters, including a State department of education, advocacy organizations, a school district, and a food industry commenter, also asserted that requiring accompaniments to be pre-portioned would be overly burdensome. For example, a number of these commenters provided examples of foods such as salads, bagels, and baked potatoes for which multiple types of toppings and condiments are routinely used. These commenters argued that having to pre-portion each potential condiment that a student could use on a competitive food product would be overly complicated for school food service staff and could also lead to waste if students do not use the pre-portioned accompaniments. Several other commenters noted that reimbursable and competitive foods are often sold on the same service line and requiring pre-portioning for the competitive foods but not the reimbursable foods would be complicated and infeasible to monitor.

### **12.3.3. Other**

Approximately four submissions provided other comments on the requirement that accompaniments be pre-portioned. An advocacy organization and a school food service staff member stated that, in the NSLP, production records are often used to calculate and record portion sizes. This commenter requested that USDA provide guidance to school food service providers regarding methods to pre-portion accompaniments and limit the use of accompaniments to appropriate amounts. Another advocacy organization urged USDA to require schools to use the labeled serving size of an accompaniment, rather than requiring them to pre-portion accompaniments.

## **12.4. Must “fit” within the nutrient profile of the food that they accompany**

### **12.4.1. Support**

Approximately 20 submissions expressed support for the requirement that accompaniments must fit within the nutrient profile of the food that they accompany. Many of these commenters, including advocacy organizations, school food service staff members, individual commenters, and a State department of education, argued that including accompaniments as part of the nutrient profile of foods they are intended to accompany would account for the meaningful level of calories, fats, sugars, and sodium accompaniments can contain. Many of these comments stated that the food item and its accompaniment should be considered as a whole when determining if they meet the standards for competitive food and that accompaniments should be considered in portions that are typically used.

### **12.4.2. Oppose**

Approximately 470 submissions expressed opposition to the requirement that accompaniments must fit within the nutrient profile of the food that they accompany. A professional association commented that school food service providers already have an incentive to provide healthy accompaniments with low fat and sodium in order to meet NSLP/SBP requirements.

A food service industry commenter and a professional association expressed concerns that nutritious foods could be disallowed under the competitive foods standards if they are judged alongside their accompaniments. These commenters cited the example of a whole wheat bagel with cream cheese as a food item that is nutritious but potentially would not meet requirements under the competitive foods standards.

A school food service company and school food service staff members commented that including accompaniments in the nutrition profile of a food requires school food service operators to make determinations about what accompaniment should be paired with each food item. These commenters asserted that it would be challenging for school food service providers to make this determination because the choice of toppings and condiments is largely a matter of personal choice on behalf of the student.

#### **12.4.3. Other**

No comments addressed this issue.

#### **12.5. Other comments about accompaniments**

Approximately 80 submissions included other comments about accompaniments. Many of these commenters, including an academic commenter, nutrition professionals, advocacy organizations, and a State department of education, requested that USDA provide additional guidance and technical assistance in implementing the standards for accompaniments if they are included in the final rule. A number of commenters requested that USDA provide technical assistance specifically on how to limit accompaniments that are high in calories, sugars, fats, and sodium in order to encourage healthier food choices by students. For example, an advocacy organization commented that schools could use smaller scoops for self-serve salad dressings and could provide educational and marketing materials related to each student's appropriate serving sizes. Some commenters also requested additional clarification on what would qualify as an accompaniment and how those accompaniments would align with the standards under the NSLP/SBP requirements.

### **13. Fundraisers**

#### **13.1 Competitive foods and beverage standards would not apply to foods or beverages sold at "a limited number" of school fundraisers (on school grounds, during school hours)**

##### **13.1.1 Support Alternative E1 - Allow State agencies discretion to establish limitations on the number of exempt fundraisers that may be held during the school year**

Approximately 85 submissions expressed support for proposed Alternative E1, which would give State agencies discretion to establish limitations on the number of exempt fundraisers that may be held during the school year.

Many commenters, including school food service staff members, school districts, health care associations, local government entities, advocacy organizations, State departments of education, a State department of agriculture, and individual commenters, expressed general support for Alternative E1. A county department of public health and a State department of education commented that State agencies possess the necessary knowledge, understanding, or resources to make decisions about what "limited number" of fundraisers is appropriate for their communities.

Advocacy organizations, a professional association, a school district, and a health care association cited a 2006 national survey of elementary, middle, and high schools that these commenters stated concludes that a concerning percentage of schools offer low-nutrition foods at fundraisers. The commenters expressed concern with regard to unhealthy fundraisers undermining the ability of schools to create a healthy school food environment. Some of these commenters noted that although schools often rely on revenue generated from fundraisers, several states and local districts have already incorporated healthy fundraisers into their wellness policies. Alternatives to unhealthy fundraisers suggested by these commenters include "no bake" bake sales, fruit sales, sale of school merchandise, and walk-a-thons.

Many commenters requested that USDA clarify portions of Alternative E1. For example, some commenters, including advocacy organizations, a professional association, and a health care association, urged USDA to clarify that if a State does not specify a frequency of exempt fundraisers then it would be implied that no fundraisers would be exempt from the competitive food requirements. Similarly, some of these commenters also urged USDA to clarify that States are not required to allocate exemptions (i.e., zero exemptions is allowable). Lastly, a health care association, a State department of education, and general advocacy organizations suggested that FNS clarify the regulation to indicate that the specially exempted fundraisers shall be “infrequent.”

### **13.1.2 Support Alternative E2 - Allow State agencies to set exempt fundraising frequency standards, subject to USDA approval**

Approximately 800 submissions expressed support for Alternative E2, which would allow State agencies to set exempt fundraising frequency standards, subject to approval by USDA.

Two trade associations, a school district, advocacy organizations, a professional association, and a school food service staff member suggested that the oversight provided by Alternative E2 would better ensure consistent application of nutrient standards across all school food-based fundraisers. Several commenters, including professional associations, school food services staff members, school districts, a county public health department, advocacy organizations, and individual commenters, urged USDA to provide State agencies with both guidance and a definition of “frequency” for exempted fundraisers to better assist State agencies and schools with developing fundraising policies. A few commenters that expressed support for Alternative E2, including a professional association, school food service staff member, school districts, a county public health department, and individual commenters, requested that FNS require an official approval of fundraisers by a school authority as a part of a local wellness policy.

### **13.1.3 Support some other determination of the “limited number” of school fundraisers that would be exempt from competitive foods standards**

Approximately 30 commenters provided alternative recommendations regarding what would constitute a “limited number” of school fundraisers that would be exempt from the competitive food requirements. Some commenters, including State departments of education and school food service staff members, suggested that USDA specify the frequency of fundraisers that would be exempt from the proposed competitive food standards. A State department of education suggested that there would be less confusion for schools and industry if USDA set one allowable limit than if each State were to set their own limit on fundraiser exemptions. Another State department of education and a nutrition professional recommended that, if USDA were to set one standard across the nation, States should be able to customize their own, stricter requirements.

A few commenters provided more specific recommendations for the frequency of fundraisers. For example, a school food service staff member suggested that food-related fundraisers should be limited to either one per grade level per year or to two food-related fundraisers per year for the entire school district. A State department of education and an individual commenter commented that limiting the frequency of fundraisers to one per month would be reasonable.

An advocacy organization recommended that USDA provide a maximum number of school days on which fundraisers would be exempt from competitive food requirements. This commenter specified that the States would then be able to define the number of exempted fundraisers as long as it does not exceed the maximum number of school days set by USDA.

A professional association suggested that the determination of the “limited number” of exempt school fundraisers be at the discretion of the State Education Agency, without USDA approval. Further, a State department of education suggested that if definitive language regarding the number of exempt food fundraisers is not provided by USDA then full approval of fundraisers should be left to State agencies or a local authority.

#### **13.1.4 Other comments on exemptions from competitive food/beverage standards for fundraisers**

Approximately 7,880 submissions provided additional comments on exemptions from competitive food or beverage standards for fundraisers. For example, a State department of education expressed concern that under the proposed provision on fundraiser restrictions, non-school sponsored fundraisers would not be restricted and would be able to continue without oversight. Two professional associations and a State agency that opposed Alternative E1 suggested that the proposed provision on fundraiser restrictions would place a burden on State agencies and LEAs. An individual commenter suggested that part of the exempt fundraiser approval process include the approval by a CN Director. Similarly, a school food service staff member suggested that approval of fundraisers include SFA-level review.

A few commenters discussed the applicability of the competitive food requirements to fundraiser foods that are not intended to be consumed by students at school (e.g., catalog sales). A professional association and advocacy organizations argued that foods sold for such fundraisers should not be subject to the competitive food requirements. An advocacy organization suggested that clarification of the intended application of the rule could be provided through a definition of “fundraiser” as, “those which are intended to be consumed by students on the school campus, during the school day.”

Some commenters discussed the sale of non-food items at fundraisers. For example, a school food service staff member expressed concern regarding the distribution of unhealthy foods and beverages that are often offered with the sale of a non-food fundraising item. An advocacy organization commented that schools should be encouraged to hold non-food related fundraisers. Similarly, a professional association asserted that in some cases schools have experienced an increase in revenue after moving from snack- and beverage-based fundraisers to fundraisers involving activities such as walk-a-thons, jump rope contests, recycling programs, and other activities.

A nutrition professional commented that because school principals determine the number and types of fundraisers that occur at a given school, State agencies would be unable to enforce the competitive food standards for fundraisers. The same commenter felt that if foods sold by SFAs are required to meet the competitive foods requirements then the same standard should apply to fundraisers and foods sold by non-SFA groups.

An individual commenter suggested that LEAs be required to maintain a list of the exempted fundraisers. A State department of education and a large city government suggested that fundraising rules should be established in local school wellness policies.

#### **13.1.5 Foods sold at all fundraisers should have to meet competitive food standards**

Approximately 660 submissions suggested that foods sold at all school fundraisers should be subject to the competitive food requirements. Numerous commenters, including professional associations, school food service staff members, a health care professional, local government entities, school districts, a State department of education, advocacy organizations, and individual commenters, suggested that in order to remove competition with school meal programs, and to ensure the success of good nutrition practices, all fundraisers held during the school day should be required to meet the competitive food standards. A professional association also urged FNS to prohibit fundraisers that provide free food or beverages items



as a condition for sale of non-food items from being conducted during the school day. Another professional association suggested that in order to stop organizations from giving away non-nutritious food options, the regulatory text addressing fundraiser restrictions (7 CFR 210.11(b)(5)) should clarify that the provision covers items “distributed” and “served” by organizations, not only those sold.

A State department of education urged USDA to remove the regulatory text addressing fundraising restrictions so as to not allow any competitive foods that do not meet the competitive food requirements. This commenter asserted that allowing competitive foods during fundraising would send mixed messages to students regarding which foods and beverages are healthy.

### **13.2 Specially exempted fundraiser foods/beverages may not be sold during school meal service in the meal service area**

Comments about time and place restrictions for specially exempted fundraiser foods and beverage sales are summarized below.

#### **13.2.1 Support**

Approximately five submissions expressed general support for the proposed provision that would prohibit the sale of specially exempted fundraiser foods and beverages during school meal service in the meal service area. Commenters that supported this provision include an advocacy organization, a State department of education, a school food service staff member, and an individual commenter. The individual commenter reasoned that allowing exempt fundraisers to occur during meal service times would result in those foods competing with school meals and suggested that FNS prohibit sales by exempted fundraisers from 30 minutes prior to the meal service to 30 minutes after the meal service.

#### **13.2.2 Oppose**

No submissions expressed general opposition to the proposed provision that would prohibit the sale of specially exempted fundraiser foods or beverages during the school meal service in the meal service area.

#### **13.2.3 Other**

Approximately 550 submissions provided additional comments regarding the place and/or time that specially exempted fundraiser foods or beverages should be sold. Numerous commenters, including advocacy organizations, professional associations, a health care association, and an individual commenter, suggested that FNS prohibit sales by exempt fundraisers across the entire school campus instead of only the food service areas. Many of these commenters suggested that extending the restriction to the entire campus would eliminate the sale of competitive foods or beverages that do not adhere to the proposed nutrition standards.

Additional recommendations regarding time and/or place restrictions for specially exempted fundraiser sales include a suggestion from a professional association that fundraisers selling competitive foods and beverages not be allowed in elementary or middle schools. Further, a nutrition professional suggested that FNS prohibit fundraisers from 60 minutes before the start of the school day to 60 minutes after the end of the school day because the CN Programs do not have the resources to monitor fundraisers. A professional association claimed that the following time limitations by grade level have been effective in Texas: no competitive foods allowed on elementary school campuses during the school day; no competitive foods allowed within 30 minutes of meals at middle schools; and no competitive foods allowed in the meal service area in high schools. An academic commenter suggested that an alternative could be to limit fundraisers to only during the last lunch period for the school.

Some commenters, including a health care association and advocacy associations, proposed that FNS should define the meal service period for purposes of the fundraiser restrictions regulatory language as “30 minutes before breakfast service begins through 30 minutes after the last lunch service ends,” in an effort to prevent competitive foods from competing with school meal programs, and to reduce the stigma associated with participating in the school meal programs.

Professional associations, school food service staff members, and a school food service company suggested that not allowing food and beverage fundraisers to be held during the entire school day would avoid competition between the school meal programs and fundraiser organizations. Further, a State department of education suggested that prohibiting the sale of foods and beverages from fundraisers during the school day would both reduce the effort and costs associated with monitoring fundraising events, and reduce the likelihood of food-borne illnesses from foods that were not prepared correctly.

### **13.3 Other comments about fundraisers**

Approximately 920 commenters provided comments about fundraisers that did not address the determination of a “limited number” of exempt fundraisers, or the time and place restriction for specially exempted fundraiser foods and beverages.

Several commenters expressed concern over the potential loss of revenue if fundraisers are limited. For example, some students, teachers, and individual commenters expressed concern regarding the effects the proposed limitations on fundraisers would have on schools, clubs, and student organizations that rely on revenues from fundraisers. A few students expressed concern that without the revenue generated from their store, they would be unable to reach their annual goals (e.g., raising funds for charity). A few teachers expressed concern about finding replacement funding for educational items that are currently purchased with fundraiser revenue, such as computers, lab equipment, and athletic gear. Some commenters, including teachers and individual commenters, asserted that the proposed limitation on fundraisers would not change students’ eating behavior, because the non-nutritious foods are available at home. Therefore, these commenters suggested that USDA allow schools to sell items at fundraisers that children prefer, so the schools and organizations can continue to raise funds.

School food service staff members, school districts, and a State department of education asserted that providing a definition of “fundraiser” would avoid inconsistencies across states. Additionally, two professional associations and an individual commenter requested that a definition of a “school sponsored fundraiser” be provided to ensure that activities that are non-school sponsored, but held on school campus, would not be subject to the proposed competitive food standards.

A few commenters recommended that additional review of fundraisers occur at the local level. Two school districts requested that the frequency of fundraisers not be finalized until feedback from principals and superintendents of schools has been provided. A school food service staff member suggested that FNS either mandate approval of food-based fundraisers by the SFA or define fines (paid to the SFA) against the general fund that would equal the number of reimbursable meals lost in the event of noncompliance.

An academic commenter, a health care association, a county public health department, and an advocacy organization urged USDA to provide schools with ideas for non-food fundraisers. Professional associations and advocacy organizations urged USDA to provide states and schools with guidance regarding standards for foods and beverages that are offered during school-sponsored fundraisers. A trade association provided FNS with a list of best practices for fundraising which included the distribution

of education materials regarding balanced diets and healthy lifestyles. Lastly, a county department of public health urged USDA to encourage schools to provide healthy foods at school-sponsored fundraisers.

In an effort to ensure that all stakeholders understand their role and responsibilities, school food service staff members, professional associations, school districts, and an individual commenter requested that exemptions for fundraisers not be included in the rule until FNS finalizes penalties in Section 303 of HHFKA.

Trade associations and a food manufacturer agreed with the proposed exemptions for school-sponsored fundraisers but requested that USDA allow fundraiser items associated with non-school hours, weekend, off-campus, or after-school events to be distributed to students during the school day so that students will have the items before they leave school.

A school food service staff member, a student, and an individual commenter commented that students who offer free food while seeking donations are concerned that their organizations would be required to meet the competitive foods standards.

A school district stated that without clarification regarding who is allowed to sell foods or beverages on campus, commercial and parent groups may continue to attempt to sell foods on school campus.

#### **14. Foods of minimum nutritional value (FMNV)**

Approximately 20 submissions addressed FMNV. Several commenters, including advocacy organizations, a State department of education, health care associations, and a trade association, expressed support for the proposed elimination of the FMNV definition and restriction, most stating that they would no longer be relevant in light of the updated competitive food standards. A State department of education stated that doing so would eliminate the current unnecessary restrictions on healthy beverage choices such as carbonated water without added sugars, for example, seltzer and sparkling water. Another State department of education commented that some State agencies may need to change or modify their language in the State law to conform to these new requirements. However, one State department of education recommended retaining the term FMNV in the regulations, arguing that there is still a possibility that some foods, such as a hard candy fortified with a nutrient of public health concern, could meet the competitive food standards, which would be contrary to the intent of the rule.

#### **15. Monitoring**

##### **15.1 School food authority (SFA)**

###### **15.1.1 Support making SFAs responsible for ensuring and documenting that foods sold by the school food service to students during the meal service periods, in meal service areas, meet the competitive food standards**

Approximately four submissions expressed support for the proposed SFA responsibilities regarding monitoring and recordkeeping. A school district and a school food service staff member commented that the school and its administrators should be the enforcer of the rules because the students and organizations involved in the sale of competitive foods at schools are not food professionals.

### **15.1.2 Oppose proposed SFA responsibilities regarding monitoring**

Approximately 620 submissions expressed opposition for the proposed SFA responsibilities regarding monitoring and recordkeeping. A State department of education commented that the proposed monitoring requirements would place a large burden on the SFA. This commenter stated that intense recordkeeping and monitoring requirements are futile and overly burdensome because there is no fiscal action associated with non-compliance.

Several commenters, including a school and school food service members, urged that SFAs (e.g., CN Directors, Food Service Departments) should not be the enforcers of the competitive food standards on the local levels. Some commenters, including school food service staff members, commented that the SFA does not have the authority to monitor schools and assure compliance with competitive food standards. This commenter stated that its Food Service Department does not have any control over a school's offerings. Similarly, a nutrition professional commented that if neither the SFA nor State agency has authority to stop or prevent the sale of foods that do not comply with the competitive food standards, then many schools will continue to sell what they want. A school and school food service staff members commented that when the SFA is seen as the "food police," there is great resentment from the LEAs and it is detrimental to their working relationship with school administration.

Numerous commenters, including school food service staff members, a local government agency, a professional association, a food manufacturer, a school district, a nutrition professional, and an individual commenter, asserted that SFAs should not be expected to take on the burden of monitoring the sale of competitive foods/beverages outside of their control. Citing this reason, a State department of education commented that competitive food standards would be very difficult to monitor. Similarly, some commenters, including school districts and an individual commenter, stated that SFAs should not be responsible for evaluating, monitoring, or training non-SFA staff for compliance with the competitive food standards. A professional association commented that requiring SFAs to provide oversight and training to personnel not under the SFA's authority is an unfunded mandate. School food service staff members stated that their SFA does not have the capacity to monitor and enforce the fundraising requirements. Other school food service staff members and a school district commented that SFAs should not be responsible for monitoring fundraising events in the school.

Numerous commenters, including professional associations, a school district, school food service staff members, a nutrition professional, and an individual commenter, urged FNS to mitigate the SFA's burden of monitoring competitive foods and training non-SFA employees. A school district suggested that SFAs should be responsible for providing information to non-SFA personnel about the competitive food guidelines that have been adopted by the school district. A school food service staff member suggested that for food sales outside the SFA, FNS should require that the sellers keep the records and that those entities be held accountable for following the competitive foods standards. A professional association urged USDA to establish standards of substantial compliance and develop a series of compliance measures that recognize the limited expertise of the non-professional school personnel, student organizations, parents, and other groups that would be prohibited from selling foods that did not meet the competitive food standards. A school district commented that monitoring and compliance with the competitive food standards should be school-based, rather than the responsibility of the SFA.

A State department of education commented that charging SFAs with the responsibility of maintaining all labels and nutrition statements for foods sold in school stores, vending machines, and during daytime fundraisers, is unreasonable. This commenter and another State department of education stated that those entities administering fundraising and vending activities do not normally report to the SFA. One State department of education suggested that school administration would more properly be able to maintain this information. Similarly, a school food service staff member urged that school administrators should

have the responsibility of monitoring compliance with the competitive food standards by entities outside of the SFA's control. A local government agency commented that monitoring is generally more effective if it comes from within the school community via the school principal or school wellness committee.

A nutrition professional commented that requiring SFAs to track the sales of NSLP items in relation to when they were on the menu is unnecessarily complicated. This commenter stated that his/her SFA serves leftovers, adds last minute substitutions, or runs un-menus third hot meal options when it is running out of the two-menus option.

A professional association expressed concern that monitoring and training of non-school nutrition employees would fall to the SFA, which this commenter stated would place a burden on programs with no additional revenue benefit, as well as cause an adversarial relationship throughout the school environment. Similarly, a school food service staff member expressed concern that the training and paperwork would get pushed onto the SFAs because they would be the most knowledgeable about the requirements.

Some commenters, including a school district, urged FNS to provide clear, concise, and helpful guidance regarding SFA responsibility for monitoring compliance with competitive food standards.

### **15.1.3 Other comments on SFA responsibilities regarding monitoring**

Approximately 470 submissions addressed SFA responsibilities regarding monitoring or recordkeeping without expressing support or opposition to this aspect of the proposal.

An advocacy organization urged USDA to specify which requirements are the responsibilities of the SFA and which fall to other school personnel. A school food service staff member commented that during implementation of the competitive food standards, monitoring responsibilities should be carefully outlined and assigned to appropriate groups within school districts.

A State department of education commented that responsibility for monitoring foods sold in school but outside of the cafeteria should be monitored by a higher authority than the SFA. This commenter reasoned that Food Service Directors often do not have any control over what is sold in these areas. A school district and a school food service staff member similarly urged that SFAs should not become the auditors of competitive food sellers outside of SFA authority such as school stores, vending machines, and fundraisers. Similarly, a school food service staff member suggested that the competitive food requirements should be implemented through the superintendents down to the principals, rather than through the SFA. This commenter stated that in their school district, a central district office plans all the menus for 18 schools. As a Food Service Director, this commenter stated that often the district office is not aware of what fundraisers or school functions occur at individual schools.

A professional association, a school district, several school food service staff members, and individual commenters expressed concern about the need to train and educate non-SFA personnel on how to comply with the competitive food standards. These commenters stated the education of non-SFA personnel would be particularly difficult because they are not under SFA's authority. A school district suggested that funding should be available through the State agency to do training at the local level with non-SFA personnel. A school food service staff member urged FNS to specify that resources from the Food Service Program cannot be used for such training. An advocacy organization, a school food service staff member, and an individual commenter encouraged FNS to provide clear, concise and helpful guidance and technical assistance that explains the competitive food standards.

Some commenters, including an advocacy organization, a food service industry commenter and a school food service staff member expressed concern that recordkeeping would be difficult for non-school nutrition professionals, and that all monitoring would be delegated to the SFA without compensation. Some commenters, including a professional association, advocacy organizations, school food service staff members, and individual commenters, urged FNS to be mindful about the budget and labor constraints that SFAs already face. A food service industry commenter and a school food service staff member asserted that recordkeeping with non-SFA staff would be nearly impossible because it would require hours of time and constant follow-up. Similarly, a school food service staff member commented that the proposed requirements would require SFAs to expend significant time in determining approved food items, keeping track of what is happening at all of the schools, and making sure schools are following the rules. A food service industry commenter stated that it is important that food service does not become the compliance police and record keepers for non-food service food sales. A school food service staff member commented that it should be the responsibility of these non-food service entities to provide documentation and accountability.

Some commenters, including school districts and an individual commenter, expressed concern that without a financial incentive, it would be unlikely that SFAs would get the necessary LEA support for compliance. A food service industry commenter stated that school food service operators report that school departments who sell food and beverages historically avoid competitive food rules. A school food service staff member commented that school administrators have used the term “plausible deniability” when they have been confronted for allowing certain food and beverage sales. This commenter suggested that it needed district annual auditors to check recordkeeping, and that it not be done through an SFA Coordinated Review Effort (CRE). A school food service staff member commented that because under the proposed standards there is no incentive for fundraising programs to comply, the SFA would likely have to take on the role of overseeing fundraising, which would take time away from improving school meals.

To alleviate time and labor burden from SFA staff during the implementation period of the competitive food rules, several commenters, including a professional association, school food service staff members, and individual commenters, recommended that States (with FNS assistance) develop a hotline for handling compliance issues.

## **15.2 Local educational agency**

### **15.2.1 Support requiring LEAs to require that, at a minimum, receipts, nutrition labels, or product specifications be maintained by those designated as responsible for competitive food service at the various venues in the school**

Approximately eight submissions, including three State departments of education, a professional association, and a school food service staff member, expressed support for the proposed LEA responsibilities regarding monitoring and recordkeeping. Two State departments of education and a school food service staff member agreed that LEAs should be responsible for all recordkeeping and monitoring because SFAs might not have control over areas in which a majority of competitive foods are sold (i.e., concession stands, vending machines, fundraisers, and school stores). A professional association and a school district agreed that recordkeeping should be performed at the district level. This professional association suggested the oversight monitoring function may be best suited for a school district's School Wellness Committee.

A State department of education and a professional association recommended that USDA provide guidance directly to LEAs to notify and assist school nutrition professionals in communicating the change in roles and responsibilities. A State department of education suggested that a specific person within an

LEA should be designated with the recordkeeping and monitoring responsibility (e.g., principal, superintendent) to ensure that the responsibility does not fall on the SFA and create undue burden. This commenter also suggested that FNS require the superintendent, school board, and/or principals to sign an attestation assuring any competitive foods sold on campus during the school day would be in compliance with competitive food standards. An individual commenter commented that FNS should make clear in the final rule and in subsequent guidance that the burden for compliance for non-cafeteria food sales is on the LEA.

### **15.2.2 Oppose proposed LEA responsibility regarding monitoring**

Approximately 455 submissions expressed opposition for the proposed SFA responsibilities regarding monitoring and recordkeeping. Several commenters, including two State departments of education, school food service staff members, and an individual commenter, commented that the proposed monitoring requirements would place a large burden on the LEA. A professional association and school food service staff members asserted that LEA monitoring requirements would require additional training for people with little or no food service experience. Other school food service staff members commented that increased staff, training, and storage would be needed for LEAs to monitor all documentation from fundraisers and that such monitoring requirements would result in increased costs for food service departments with already stretched budgets.

A school food service staff member suggested that any requirements for collecting and retaining documentation (i.e., nutrition labels, receipts, etc.) associated with competitive foods sold outside of the food service program should be eliminated from competitive food standards because recordkeeping for non-food service professionals would be difficult. An individual commenter commented that it would be unrealistic and burdensome to require LEAs to retain and record receipts, labels, nutrition, and product specifications to ensure and document compliance when food and beverage items offered at certain exempt fundraisers do not need to comply with any nutrition standards.

A professional association and a school food service staff member urged that it should not be the LEA's responsibility to maintain the paperwork for other entities that have fundraising events in the school. Similarly, a school district stated that LEAs do not want the burden of policing fundraisers.

A professional association and two school districts commented that because LEAs have their own agendas, compliance with competitive food monitoring requirements is unlikely.

### **15.2.3 Other comments on LEA responsibilities regarding monitoring**

Approximately 53 submissions addressed LEA responsibilities regarding monitoring or recordkeeping without expressing support or opposition to this aspect of the proposal.

An advocacy organization urged USDA to consider the potential impact of the proposed monitoring requirements on LEAs, which would require LEAs to collect data from non-SFA food vendors. An association representing school boards and districts across the country urged USDA to postpone implementation of the proposed recordkeeping and compliance requirements for LEAs until a study has been completed on the costs to school districts. A professional association expressed concern that the proposed rule would have significant costs to LEAs (e.g., personnel and fiscal resources) without any additional resources. An association representing school boards and districts across the country expressed concern about the proposed monitoring requirements because it asserted that school districts have been overwhelmed in anticipation of budget cuts due to sequestration.

Two State departments of education asked who would provide technical assistance and training to the non-food service staff in charge of monitoring. An advocacy organization expressed concern about the need for SFAs to train and educate non-school food service personnel on compliance with recordkeeping requirements. For example, a school food service staff member and an individual commenter commented that, in their districts, principals are responsible for vending machines in their schools and would need to be trained in the recordkeeping requirements. One State department of education commented that training would likely be required on an ongoing basis as leadership in various school organizations changed or are added on a regular basis. This commenter further stated that training would be required of all individuals and/or groups involved in fundraising at any time during the school day. This commenter requested that this training not be the responsibility of or funded by the SFA.

A professional association, a food service industry commenter, a nutrition professional, and a school food service staff member expressed concern that under the proposed monitoring requirements, LEAs would delegate school-based documentation to the SFA, which would become ultimately responsible for maintaining appropriate documentation throughout the school district. A food service industry commenter expressed concern that this delegation by LEAs would place additional demands on school food service labor and would impose unreasonable costs on food service programs. For this reason, an advocacy organization recommended that USDA provide detailed guidance for LEAs on how to properly document and maintain records to verify compliance. A large city department of public health and a professional association urged FNS to make clear that monitoring of foods sold outside the cafeteria is not the responsibility of the SFA. The city department of public health suggested that the School Food Wellness team could develop a plan for monitoring and enforcement that does not rely only on the SFA, which generally has no authority outside of the cafeteria.

An advocacy organization and a professional association commented that under the proposed monitoring requirements for LEAs, volunteer organizations like Parent-Teacher Associations (PTA) would be required to keep food nutrition records for the first time. These commenters urged USDA to put in place mechanisms that minimize the burden on volunteer time and capacity in a way that does not discourage volunteers from participating in fundraising venues like school stores. Further, these commenters encouraged USDA to provide thorough compliance guidance after the rule has been finalized, as well as technical assistance for non-SFA organizations that may maintain venues that serve food in schools. Similarly, a State department of education suggested that FNS should provide easy-to-understand materials to LEA staff. This commenter also expressed concern regarding how fundraising groups that have little or no connection to the LEA would be reached for purposes of education regarding the competitive food standards and recordkeeping requirements.

An advocacy organization urged USDA to consult with nongovernmental organizations that would be impacted by the rule to ensure that compliance procedures are realistic and attainable.

A State department of education requested that FNS elaborate on the italicized proposed language in 7 CFR 210.11(b)(3): “The local educational agency shall be responsible for ensuring that *organizations designated as responsible for food service at the various venues* in the schools maintain records in order to ensure and document compliance....” This commenter asked whether this language was referring to the food service management company, principals, teacher, the authorized representative, or the Food Service Director.

A professional association urged the creation of creative compliance measures and the acknowledgement of good faith implementation efforts at the school level. This commenter suggested that FNS leave out of the final rule the recordkeeping requirements requiring retention of nutrition labels and product specifications, and instead only impose such requirements as a compliance measure in instances of



substantial noncompliance identified through State Administrative Reviews or periodic district self-assessments.

### **15.3 State agency**

#### **15.3.1 Support making State agencies responsible for monitoring compliance with competitive food standards through a review of LEA records documenting compliance with these requirements**

Approximately six submissions expressed support for the proposed State agency responsibilities regarding monitoring and recordkeeping. An advocacy group and a school food service staff member commented that requiring State agencies to be responsible for monitoring compliance with the competitive food requirements would be important for ensuring compliance.

#### **15.3.2 Oppose proposed State agency requirements regarding monitoring**

Approximately seven submissions expressed opposition for the proposed SFA responsibilities regarding monitoring and recordkeeping. Some commenters, including two State departments of education commented that the proposed monitoring requirements would place a large burden on the State agency. Another State department of education commented that monitoring of competitive foods would be a detailed task that would require additional staff, funds, and time. This commenter stated that a thorough review of competitive foods would not be possible as part of a State agency review because of all the other requirements for school nutrition programs. This commenter asserted that State agencies would need to either provide additional funding to support more staff for the additional time needed for compliance, monitoring and technical assistance; or reduce the frequency or comprehensiveness of compliance checks.

One State department of education commented that competitive food sellers in a school should have to certify upon review that they are compliant with the competitive food requirements, but that it would be unreasonable to assume the State agency could monitor competitive food sales on a LEA-by-LEA basis. A State department of education commented that when the State agency reviewers arrive on site, they would have to rely on the paperwork collected by the SFA and would not be able to visit all the areas of the school campus. For that reason, this commenter suggested that competitive food standards be voluntary, urging the use of incentives, technical assistance, and training for schools, instead of spending resources on monitoring.

Two State departments of education opposed State agencies having the burden to monitor compliance for all school-sponsored fundraisers. One State department of education commented that the monitoring of fundraising activities would be beyond its scope of duties.

#### **15.3.3 Other comments on State agency requirements regarding monitoring**

Approximately 20 submissions addressed State agency responsibilities regarding monitoring or recordkeeping without expressing support or opposition to this aspect of the proposal. One State department of education commented that putting State agencies in the position of monitoring competitive food sales would put them in an adversarial position that would be bad for their image and partnerships.

One State department of education requested that FNS be considerate of State agencies and their monitoring capabilities. Two State departments of education commented that monitoring compliance with the competitive food requirements would be a burden to State agencies, which could potentially be very difficult for State agencies to monitor and enforce.

Another State department of education asked how the information about competitive foods would be verified from administrators.

A State department of education commented that the competitive food requirements would be problematic to monitor and enforce without very clear guidance from FNS. Another State department of education asked how frequently the assessment of competitive foods needs to happen.

An advocacy organization requested that State agencies work with SFAs to develop appropriate policies to reduce mobile vending at key school access points, such as entrances and areas surrounding the school's perimeter to prevent the sale of unapproved foods and beverages. This commenter and an individual commenter requested that USDA require State agencies to distribute a memorandum to all school district superintendents, principals, and food service staff clearly stating what is allowed and what is not allowed, using both nutrient formulae as well as specific product lists. In States that enact their own competitive food and beverage standards, these commenters urged USDA to require that Administrative Reviews include observations of blended State/Federal competitive food compliance.

Multiple advocacy organizations and a municipal public health agency urged FNS to include compliance with the water requirements in State agency administrative review responsibilities. Another advocacy organization recommended that USDA include clear criteria for avoiding overt identification and stigmatization as part of administrative reviews. This commenter stated that when competitive foods are sold in locations different from the school meal line, there is a clear separation between school meal participants (often children from low-income families) and non-participants. This commenter expressed concerns that such situations lead to the overt identification of students receiving free or reduced-price meals and the perceptions that school meals are only for poor children rather than for all children.

An advocacy organization and an individual commenter suggested that USDA require State agencies to increase the transparency of review findings by using the Internet and tools such as Local School Wellness Policy committees to post review findings in order to hold non-compliant sites accountable, inform the public, and empower local leaders.

#### **15.4 Other comments about recordkeeping or monitoring**

Approximately 120 submissions addressed other comments about recordkeeping or monitoring.

A professional association and a school district commented that compliance and monitoring would increase paperwork and costs to both the SFA and the State agency. A school food service staff member stated that a small- or medium-sized school district would not have the resources to do all of the required calculations to approve competitive food items. An advocacy organization urged USDA to be mindful of the impacts of recordkeeping requirements on LEAs and organizations such as PTAs. An advocacy organization suggested that USDA should fund studies to evaluate the impact of the competitive food requirements. A professional association commented that FNS should ease the burdens of monitoring competitive foods and training of non-SFA employees. A school food service staff member commented that their employees should be focusing on food quality and safety, rather than paperwork.

A State department of education and an advocacy organization commented that education and ongoing technical assistance would be needed to ensure consistent application of the recordkeeping requirements and to ease the burden on those with limited time to make those determinations. An advocacy organization recommended that USDA clearly delineate authority and provide ongoing guidance because the responsibility for ensuring compliance is split between the LEA and the SFA. Another advocacy organization urged USDA to provide comprehensive, user-friendly guidance on recordkeeping

requirements. A State department of education and a school district requested clarification on recordkeeping requirements.

Several commenters, including a State department of education, an advocacy organization, a school food service staff member, and an individual commenter expressed concern that monitoring of competitive foods would ultimately be assigned to the local SFA. A school food service staff member and an individual commenter stated that such delegation would be ineffective because SFAs do not have the authority to oversee the sale of competitive foods outside of their area. An advocacy organization commented that it would not be fair or feasible for food service directors to have the additional responsibility of policing competitive food requirements. A State government agency and a professional association expressed concern that ensuring compliance may be problematic if many different people are responsible for recordkeeping.

Some commenters, including school food service staff members, expressed concern that compliance with recordkeeping would be difficult for items sold outside of the SFA's responsibility. A school food service staff member urged USDA to invest in non-food service personnel education. A nutrition professional opposed requiring non-school food service staff to maintain records concerning what competitive foods were sold at fundraisers. This commenter stated that any such requirements would be unenforceable because teachers and administrators would either refuse or not be able to properly keep the necessary records. A professional association and a school food service staff member suggested that entities that sponsor fundraisers should be required to retain documentation to substantiate that they met the competitive food standards. A school food service staff member suggested that school administrators should be required to report annually the number and type of exempted fundraisers.

An advocacy organization and an individual commenter suggested that USDA identify a clearer role for school district leadership in corrective actions. The advocacy organization urged USDA not to depend on SFAs alone to achieve compliance. Similarly, an individual commenter urged that regulations should require the school system itself to monitor competitive foods. A State department of education recommended that one person at each school should be designated as responsible for ensuring that the competitive food requirements are being consistently followed, rather than the nutrition director. A school food service staff member commented that all stakeholders should be held accountable for upholding the nutrition standards for competitive foods. An advocacy organization urged FNS to make clear that monitoring of foods outside the cafeteria is not the responsibility of the SFA. A school food service staff member expressed concern that because compliance with recordkeeping requirements is evaluated in the administrative reviews of the school food service program, any finding of non-compliance would be a food service finding, rather than an LEA finding. This commenter stated that unless LEAs "buy in" to the competitive food requirements, there will likely be repeated findings of noncompliance.

An advocacy organization and an individual commenter listed factors it stated have limited full compliance with State and local competitive food rules, which included deeply ingrained student preferences and demand for unhealthy snacks; powerful industry marketing efforts; fundraising for extracurricular programs; involvement of multiple school staff; and confusion over computing nutrient calculations. A school food service staff member expressed concern that the competitive food standards cannot or will not be monitored because it is highly profitable for the different clubs and organizations to sell competitive foods. An individual commenter commented that competitive food requirements will only be followed if principals and local wellness committees are held responsible and suggested that there should be an unannounced monitoring system in place.

A State department of education commented that USDA should make the competitive food requirements as simple as possible, both in implementation and for monitoring and compliance. An advocacy

organization commented that the elimination of competitive foods altogether would make compliance far easier for everyone. An individual commenter commented that funds spend monitoring the competitive food requirements could be better spent on nutrition education for students, which would teach them to make better choices. A school district expressed concern that schools within non-traditional grade levels would have difficulty monitoring standards that vary for differing age groups.

A State department of education recommended that FNS use one term (either LEA or SFA) that refers broadly to the school when referring to the responsibility to meet competitive food requirements, including areas that are within the jurisdiction of the school food service department. This commenter stated that the proposed rule distinguished between monitoring responsibilities of the SFA and the LEA, which implies that they are separate entities and that SFA refers only to the school food service. However, this commenter stated that program regulations define SFA as the “governing body which is responsible for the administration of one or more schools” and has the “legal authority to operate the Program therein.” This State department of education commented that it has consistently clarified to schools that the school itself, whether referred to as the LEA or the SFA, is ultimately responsible for program requirements.

A professional association suggested that USDA compile a database of snack and beverage items sold as competitive foods that meet the competitive food standards, rather than requiring schools to analyze the nutritional content and retain thousands of food labels or product specifications to document compliance. Citing President Obama's Memo on Regulatory Compliance, an advocacy organization suggested making administrative reviews and monitoring reports at all levels of the system available online to the public.

## **16. Enforcement**

### **16.1 Support proposal that if an SA determines during administrative review that violations have occurred, correction action plans must be submitted to SA by LEA and SFA**

No submissions expressed support for this aspect of the proposal.

### **16.2 Oppose proposal regarding corrective action plan**

Approximately seven submissions expressed opposition to the proposed corrective action plan enforcement mechanism. A school district and an individual commenter opposed the aspect of the proposal that would allow a State agency to issue corrective action to the LEA or SFA, arguing that an SFA should not be held responsible for competitive food violations occurring outside of programs under the SFA's control. An individual commenter suggested that this should be clearly stated in the rule language.

A State department of education opposed requiring State agencies to enforce competitive food requirements. This organization commented that USDA would be placing State agencies in a bad position if the competitive food requirements have no “teeth,” and compared the competitive food requirements to the Wellness Policy requirement, which it stated does not include fiscal actions for violations. This commenter asked from which fund a fiscal action violation would come if the competitive food requirements were violated by a booster club and they did not submit a correction action plan. This commenter asserted that in most districts the food service director does not wield much clout.

A school district recommended that the corrective action be applied to the LEA, rather than the SFA, because the LEA is charged with recordkeeping and assuring compliance for the competitive food requirements in areas outside of the control of the SFA.

### **16.3 Other comments on enforcement of competitive foods and beverage standards**

Approximately 900 submissions addressed enforcement issues without specifically supporting or opposing this aspect of the NPRM. Some commenters, including State departments of education, a professional association, and individual commenters, requested clarification on consequences when noncompliance with the competitive food requirements is found (e.g., State agency actions, consequences for LEAs). A professional association suggested that USDA has nothing it can leverage against State agencies and LEAs for noncompliance. Numerous commenters, including school food service staff members, recommended monetary penalties for violations of competitive food requirements to motivate compliance.

Many commenters, including State departments of education, a large city department of public health, an advocacy organization, a school, and an individual commenter, asserted that the only way entities outside of the SFA would comply is if there are monetary penalties for noncompliance. An advocacy organization urged that State or local competitive food standards should be subject to the same penalties. A professional association supported fiscal penalties for any entity serving, selling, or giving away foods that do not meet the competitive food requirements and fundraising limitations. In contrast, a municipal department of public health urged FNS to incentivize compliance and not to punish non-compliance, because of the assertion that USDA and LEAs should ensure that competitive food standards are seen as support, rather than a burden.

Many commenters, including a professional association, a State department of education, school districts, school food service staff members, a nutrition professional, and individual commenters, suggested that SFAs should not incur penalties for violations that result from the actions of entities not under their authority. Similarly, some commenters, including school food service staff members, commented that SFAs should not be held liable for violations of fundraiser rules because they have no control over those responsible.

A school district and a school food service staff member recommended that if violations of competitive food requirements occur outside of the food service operation, the fine should be assessed to the general fund, rather than the food service account. Similarly, one school food service staff member suggested that penalties should be charged to the LEA, rather than the SFA, when fundraisers are found to be noncompliant. A State department of education commented that SFAs should not suffer the repercussions from noncompliance with the competitive food requirements. A food manufacturer recommended that FNS consider the TPSNP penalty approach as a model. Under the TPSNP, if a non-SFA entity (e.g., a school principal) operates a vending machine and violates the rules, meals can be disallowed and that entity (e.g., the school district) must replace the funds to the SFA.

Several commenters, including a State department of education and school food service staff members, suggested that the penalty payments should be required of the school or school district, rather than come from food service program funds. Otherwise, a State department of education argued, there would be no motivation for school administrations to assure compliance with vending outside of an SFA's control if the corrective action must be submitted by food service. Another State department of education suggested that fines should clearly detail which entity should be sanctioned (i.e., from the general fund or the school food service from the food service account). A school district commented that compliance standards should be consistent between the school food service operations and all additional operators of competitive foods. This commenter stated that current violations in a school food service operation require immediate reclaiming of reimbursement without grace period and requested that the same standards apply to violations outside of the school food service operation.

A school and a school food service staff member recommended that penalties be clearly spelled out to the LEAs. A school suggested that fines should be large to motivate LEAs that generate large amounts of revenue from their competitive food sales. A State department of education commented that although it requires schools found noncompliant with its competitive food requirements to reimburse the SFA account, school personnel often choose to willfully violate the standards because the penalty is low compared to the daily revenues produced by competitive foods. A school food service staff member recommended that the rule have provisions for increased fines if schools are found out of compliance numerous times. Another school food service staff member suggested that, at a minimum, fines should be the amount of the USDA reimbursement earned on the day of the infraction. This commenter also urged USDA to not impose retroactive fines for the time period before fines are established.

An advocacy organization urged USDA to further detail the penalties associated with noncompliance with the competitive food requirements in its forthcoming proposed rule to implement Section 303 of the HHFKA. An individual commenter commented that addressing competitive food requirement noncompliance penalties in this future rulemaking is unacceptable because it leaves SFAs with too much uncertainty. This commenter expressed concern about what it asserted was the proposal's lack of clarity regarding enforcement penalties and who would be liable for them in instances of noncompliance. A food manufacturer requested that USDA delay implementation until the forthcoming proposed rule implementing HHFKA Section 303 is finalized and commented that both proposed rules should be available simultaneously.

A State department of education recommended expanding the proposed regulatory language in 7 CFR § 210.18(h)(7) to address corrective action and withholding of payment for noncompliance findings even though 7 CFR § 210.24 addresses corrective action and the withholding of payment for a SFA found out of compliance for the entire 7 CFR part 210. This commenter provided specific recommended additional regulatory text, as well as several reasons for this suggestion which included the argument that it is important for all groups to understand the comprehensive rules and comprehend the consequences of not complying with the requirements. This State department of education reasoned that groups that are less familiar with regulatory language, such as PTAs and Associated Student Bodies, would more likely find the compliance language if it is located within the provision titled "Compliance with competitive food standards."

An individual commenter urged that oversight and accountability should be the responsibility of an office or individual outside of the food services division. This commenter and another individual commenter suggested that there should be a mechanism for reporting violations, such as a toll-free number or website, the information about which should be required to be posted in the cafeteria and distributed to parents yearly.

#### **17. USDA implementation technical assistance/guidance**

Approximately 80 submissions addressed the need for technical assistance or guidance from FNS or USDA without addressing a specific issue area. An advocacy organization commented that particular attention should be paid to the needs of small and rural school districts, which it stated, typically face higher barriers to implementation. Other advocacy organizations recognized that some schools, particularly in rural districts, may educate students in unconventional grade groupings and requested that USDA provide guidance to schools on how to implement the final competitive food requirements for such shared campus circumstances.

Several commenters, including advocacy organizations, professional associations, and a health care association, suggested that USDA share lessons learned from school districts that have successfully made the transition to offering healthier competitive foods. These commenters further suggested that USDA

research and distribute best practices for addressing common implementation issues, such as educating students, promotion of new food and beverage items, revising purchasing and/or vendor contracts, and improving student acceptance of new items. An advocacy organization commented that best practices should include experiences with effective communication about competitive food changes from districts and schools to teachers, students, and parents, stating that messaging and communication are important parts of shaping demand for competitive foods and school meal programs. A health care association encouraged USDA to provide technical assistance on cost control, marketing and promotion, behavior change communication, and cultural preferences regarding competitive foods. A professional association and a nutrition professional suggested that technical assistance include data showing the causal relationship between good nutrition and learning.

A State department of education suggested that USDA develop guidance that schools can use to address evaluation and tracking of all foods available outside of the school meals program on the school campus during the school day. Several commenters, including a State department of education, a professional association, an academic commenter, and a school food service staff member, recommended that USDA develop a list of acceptable food and beverage products that meet the competitive food standards. The professional association commented that industry should readily cooperate with such an initiative because it would facilitate sales of their products in schools. The academic commenter cited the Connecticut State Department of Education's List of Acceptable Foods and Beverages that meet State nutrition standards as an example of such a list. The school food service staff member suggested that USDA make such approved products available to all school districts with fair pricing and make sure that all areas of the United States have access through their local vendors. An individual commenter that owns a vending company requested that FNS provide a list of items that meet the competitive food requirements and an established planogram of a vending machine. This commenter reasoned that most vending suppliers are not nutritionist and do not have one on staff.

A State department of education recommended that USDA develop a process that would allow manufacturers to include a statement on a product indicating that it "meets NSLP competitive food requirements." Two State departments of education requested that USDA develop an online calculator tool to help schools determine if competitive food or beverage items meet the competitive food requirements. Similarly, an individual commenter urged USDA to create a spreadsheet that would allow people to enter the nutrient information on competitive foods and beverages, then calculate compliance providing a green "yes" or a red "no" much like the meal spreadsheets. A trade association recommended that USDA provide guidance in the form of instructions on how to perform calculations related to the nutrient standards, for example, based on the information on the Nutrition Facts label.

Several commenters, including advocacy organizations, professional associations, a health care association, and an individual commenter, urged FNS to provide technical assistance to school systems on successful and creative ways to generate funding from sources other than food sales. Some commenters, including advocacy organizations and a professional association, suggested that because research has shown that any potential revenue losses from competitive food sales can be offset by increased participation in the school meal programs, USDA should continue to work with schools to increase enrollment and participation in the NSLP and SBP. An individual commenter stated that currently nutrition integrity and guidelines are easily overlooked so money can be made to support other important but unbudgeted student needs.

A State department of education, a school food service staff member, and an individual commenter emphasized the importance of training and educating non-SFA personnel as to how to comply with competitive food requirements. Similarly, a county department of public health emphasized the importance of technical support for implementation because the audience for competitive food requirements is mostly school staff and parents. A health care association commented that SFAs face

significant challenges meeting budgetary constraints and providing training to individuals with no prior school nutrition experience, and asserted that technical assistance provided to LEAs would be critical for the success of the competitive food requirements. A school food service staff member and an individual commenter asserted that without additional funding for such training, they would need to rely on clear and concise training materials provided by FNS. An advocacy organization, a health care association, and a county public health department emphasized that training and technical assistance would be a key element to successful implementation of competitive food requirements. An individual commenter expressed concern about the implementation of the competitive food requirements without proper training and dialogue with those required to implement the standards.

Several commenters, including advocacy organizations, professional associations, and a nutrition professional, suggested that USDA partner with other entities such as the U.S. Department of Education and State departments of education, the CDC, and nongovernmental organizations that have expertise in nutrition policy to provide technical assistance to school superintendents, LEAs, and SFAs. An advocacy organization encouraged USDA to involve vendors in the education efforts around the new competitive food requirements, stating that there are many small vendors that interact with schools every day, including vending operations, brokers, and distributors. This commenter stated that this would allow small companies to stay involved in school business alongside large companies, which would provide more robust product variety.

An individual commenter requested more information regarding the plan to educate stakeholders about the competitive food requirements. A school food service staff member expressed a lack of confidence that USDA training would be sufficient to educate school food service employees regarding the applicability of the competitive food standards to NSLP/SBP entrees and side items, citing what it perceived as a lack of training and guidance from USDA on the new NSLP/SBP requirements.

An individual commenter recommended that USDA should provide resources to help schools that want to eliminate competitive foods to both maximize the economic benefit to schools and protect children from companies seeking to target children with their brands of processed foods.

## **18. Regulatory Impact Analysis (Executive Order 12866 analysis)**

### **18.1 Behavioral responses of students and schools to proposed rules (e.g., student food choice, school participation in NSLP/SBP)**

Approximately 295 submissions addressed the potential behavioral responses of students and schools to the proposed rule. Many commenters, including a school district, health care association, advocacy organizations, academic commenters, a student, a professional association, and a trade association, suggested that the proposed regulations would result in positive behavioral responses from students and schools. Specifically, a school district, an advocacy organization, a professional association, and a student commented that the proposed rule would improve children's diets and eating habits. Several commenters, including advocacy organizations, academic commenters, health care associations, and an industry association, cited research findings that they asserted indicate that the proposed competitive food standards would lead to increased participation in regular school meal programs; improved dietary intake; decreased access to, purchase of, and consumption of unhealthy foods and beverages; and increased access to, purchase of, and consumption of healthier options. Some commenters, including an advocacy organization, stated that continued sales of competitive foods and beverages would lead to decreases in school meal participation.



Several commenters, including school districts, a food manufacturer, a trade association, a nutrition professional, and school food service staff members, suggested that the proposed rule would reduce student participation in school meal programs, and urged FNS to consider the impacts associated with decreases in program participation. Many other commenters, including a health care association, individual commenters, a school district, school food service staff members, and a nutrition professional, indicated that students would remain hungry after eating a meal or forego eating foods sold in school all together as a result of the rule. Similarly, many commenters, including school districts, school food service staff members, a State department of education, a school food service company, food manufacturers, a trade association, an individual commenter, and advocacy organizations, stated that the proposed rule would force schools, particularly those with low percentages of free or reduced price students, to end participation in the school meal programs altogether.

Numerous commenters, including school food service staff, students, an individual commenter, food manufacturers, and school districts, asserted that under the proposed rule, students would bring unhealthy food from home or go off campus to buy food and beverages of their choice. Some commenters, including an advocacy organization and a food manufacturer, suggested that students would be able to purchase unhealthy foods from school fundraisers as an alternative to school meals, jeopardizing FNS' goal of improving student health and reducing childhood obesity. Several individual commenters suggested that the rule would lead to behavioral issues among students.

Another set of commenters, including a member of the food service industry, school food service staff members, a school district, a trade association, and a professional association, suggested that the proposed rule would create a "black market" for food and beverages no longer sold in schools. These commenters suggested that students and teachers would bring these products on campus, leading to food safety issues and public safety concerns.

## **18.2 Economic effect on children and their families**

Approximately four submissions addressed the economic effect the proposed rule would have on children and their families. An individual commenter stated that the proposed competitive food standards would result in students spending more money for less food. Two school food service staff members commented that fresh fruits and vegetables are expensive. A nutrition professional commented that under the proposed competitive food requirements economically disadvantaged students would not be able to afford the foods sold.

## **18.3 Benefits**

### **18.3.1 Social cost savings (e.g., associated with excess body weight)**

Approximately 17,025 submissions addressed the social cost savings associated with the proposed rule. Many commenters identified social cost savings that would be attributable to the proposed rule. Overall, these commenters, including advocacy organizations, school districts, an academic commenter, and individual commenters, suggested that the proposed rule would improve children's nutrition and dietary health, which would help to reduce their risk of obesity, diabetes, high blood pressure, and other chronic illnesses; improve performance in school; and yield long-term health care savings as a result.

Several commenters discussed social cost savings that they asserted would be associated with the proposed sodium limits. These commenters, including advocacy organizations, argued that reduced daily salt intake could reduce the annual number of deaths from heart disease, stroke, and heart attack, and reduce health care costs, citing research studies. These commenters asserted that the proposed sodium limits would help reduce children's intake of sodium.

A few commenters asserted that the proposed rule would not yield social cost savings. Specifically, a school food service staff member suggested that meals and snacks purchased at schools would not impact the childhood obesity epidemic. An advocacy organization disagreed with the fat standards in the proposed rule, stating that a 10% limit is too high to ensure heart health. This commenter asserted that a lower limit would be necessary to produce a meaningful reduction in the risk of cardiovascular disease and type 2 diabetes. An individual commenter argued that flavored milk and water, as allowed under the proposed rule, cause health, behavior, and learning problems, including attending deficit hyperactivity disorder and other syndromes on the autism spectrum.

**18.3.2 Ancillary benefits (e.g., improving nutritional value of competitive foods will support the parents' efforts to promote healthy choices at home and at school, reinforce school-based nutrition education, and contribute to overall effectiveness of school nutrition environment in promoting healthful food and physical activity choices)**

Approximately 16,860 submissions, including a mass mail campaign, addressed ancillary benefits associated with the proposed rule. Some commenters suggested that the proposed rule would enhance a school's learning environment by providing proper nutrition and spurring discussion about mind-body health. A trade association and an individual commenter asserted that the proposed changes would reinforce healthful eating behaviors and offer a greater variety of foods to student populations. A school district suggested that the proposed rule would benefit school food service operators by offering a consistent set of standards with the option to tailor the standards as needed for the school population. Another commenter urged FNS to provide additional funding to schools to support educational outreach to families regarding healthy eating.

A few commenters, including an advocacy organization, a school district, and a local government agency, addressed how the proposed rule would affect the "stigma" associated with the free and reduced price meal program. These commenters asserted that the proposed rule would help to remove the stigma on students participating in the free and reduced school lunch program by requiring the same nutritious food options for all students.

Some commenters, including a health care professional, a school district, an advocacy organization, and an individual commenter, suggested that the proposed rule would support parental efforts to provide health food options outside of school. These commenters stated that the proposed competitive food requirements could lead to healthier lifestyles outside of school.

An advocacy organization asserted that the proposed rule would lead to decreased purchases of competitive foods, but increased participation in school meal programs. As a result, this commenter stated that students would be eating healthier, and schools would benefit from the higher financial margins associated with the meal program. An academic commenter suggested that the proposed rule would lead to higher military eligibility rates and fewer sick days taken throughout the population.

**18.3.3 Other comments about benefits**

One submission addressed other benefits of the proposed rule. An individual commenter suggested that the rule's restrictions on candy and soda would reduce hyperactivity among children while they attend class.

## **18.4 Costs**

### **18.4.1 Effects on school revenue**

Approximately 1,050 submissions addressed the proposed rule's effects on school revenue. Numerous commenters, including nutrition professionals, members of the food service industry, school food service staff members, school districts, professional associations, food manufacturers, trade associations, State government agencies, an association representing school boards across the country, and individual commenters, suggested that the proposed rule would have a variety of negative effects on school programs. These commenters expressed concern that the proposed rule would cause major financial impacts on schools, such as decreased revenues, increased program costs, increased prices for meals, program solvency issues, reduced funding for other educational programs, and job losses.

Some commenters provided input on the potential revenue impacts specifically associated with the proposed restrictions on beverages. These commenters, including school food service staff members, a trade association, a dietician, a nutrition professional, and a school district, suggested that limits on competitive beverage options would decrease revenue, lead to job losses, affect program solvency, and reduce program profits.

Several commenters, including trade associations, a food manufacturer, a school food service company, and individual commenters, argued that FNS did not adequately characterize the impacts of the proposed rule on schools. Some of these commenters requested more detailed data and research on the impact of the proposed competitive food requirements on school revenues, including the cost for schools to provide healthier foods. Some commenters asked that FNS consider how these economic impacts would vary depending on factors such as SFA demographics, free and reduced eligibility, and the extent of a la carte sales prior to implementation. Other commenters questioned the validity of the research cited by FNS regarding the economic impact of the rule. For example, a food manufacturer wondered if the studies that showed a shift from competitive foods to meals were conducted after the implementation of FNS' new NSLP/SBP meal pattern standards. If not, this commenter suggested that these studies may not be reflective of the actual impact of the proposed rule. A school food service company argued that the studies cited in the proposed rule measure the effect on school districts in the aggregate, which masks the impacts incurred by certain subsets of SFAs (i.e., those with varying demographics, different free and reduced eligibility percentages, the extent of a la carte sales prior to implementation, and accounting for different a la carte standards already in place).

Many individual commenters, including students, argued that the proposed rule would either significantly impact the revenues or force the closure of their school store. As a result, the commenters explained that the school would not be able to support certain school programs and community activities.

In contrast, many commenters indicated that the proposed rule would not result in declining school revenues. Most of these commenters cited research findings that they asserted show some schools could collect more revenue when implementing nutrition standards for competitive foods. Some of these commenters also suggested that should there be any revenue losses from competitive food sales, these potential losses could be offset by increased participation in the school meal programs. These commenters, therefore, encouraged USDA to continue to work with schools to increase enrollment and participation in the NSLP and SBP. An individual commenter discussed the experience San Francisco's school system had after changing their district's meal service. The commenter stated that San Francisco's meal service was operating at a loss before transitioning to healthier standards, but that after the meal service introduced healthier options, the district's program became profitable.

#### **18.4.2 Administrative costs**

Approximately 500 submissions addressed the administrative costs associated with the proposed rule. Numerous commenters expressed concern regarding the administrative costs associated with the proposed rule. Several commenters, including school districts, school food service staff members, a nutrition professional, individual commenters, and professional associations, argued that the proposed rule would increase paperwork and administrative costs. Additional commenters, including school food service staff members, a school food service company, and individual commenters, stated that schools do not have sufficient staffing or budget to conduct nutritional analyses of competitive foods, and claimed that these additional burdens would take away from their other duties. A nutrition professional and a school food service staff member suggested that requiring food service staff to maintain records concerning competitive foods sold for fundraisers would be too burdensome. A food manufacturer recommended that FNS make the competitive food regulations consistent with the current NSLP/SBP meal pattern regulations and definitions to reduce the administrative burden on SFAs. This commenter asserted that consistency with the reimbursable meal standards would enable SFAs with already challenged budgets to leverage volume cost savings inherent in a single set of requirements.

A school food service company stated that because the proposed rule covers competitive foods that are made on site from a recipe as well as pre-packaged foods, the proposed competitive food requirements would require an SFA to purchase nutrition analysis software to analyze food items made on site and offered as competitive foods. In addition to the cost of the software, this commenter asserted that the food service program would incur administrative costs associated with training food service staff and dedicating staff time to conducting nutritional analysis of competitive foods. Similarly, a professional association commented that the proposal would result in burdensome administrative costs in terms of time, manpower, software, and money that no public school nutrition program can currently afford to spend.

#### **18.4.3 Impacts on food manufacturers (e.g., ability of products to meet proposed standards with changes to product packaging size or product formulation)**

Approximately 120 submissions addressed the impact of the proposed rule on food manufacturers. Several commenters, including a professional association, trade associations, a member of the farming community, food manufacturers, school food service staff members, and an individual commenter, discussed the significance of the proposed rule's impact on the food industry. These commenters identified specific impacts as a result of the rule, including lost jobs, lost profits, significant costs to reformulate and repackage food and beverages, increased prices for students, and reduced industry participation in supplying schools with products. Some commenters provided estimates for the cost associated with complying with the rule. A food service staff member estimated that manufacturers would have to spend millions of dollars to reformulate or repackage products to meet the proposed rule requirements. Another food service staff member suggested that food manufacturers would incur an additional \$90,000 to \$120,000 in reformulation and distribution costs per product.

A few commenters cited impacts specific to industry/product offerings. A professional association stated that the proposed rule would have a significant impact on manufacturers and agriculture in Pennsylvania, such as the dairy industry and single serve health snack manufacturers. A food and beverage manufacturer noted that it already has invested significant time and resources in reformulating products sold in schools. Another food manufacturer asserted that due to limitations in current sodium reduction technology, the proposed rule would eliminate its product from school cafeterias. A school food service staff member agreed with this commenter and asserted that the proposed sodium limitations would impose a significant financial impact on manufacturers of beef, chicken, and other protein-based entrees.

A commenter from the farming industry urged FNS not to eliminate dried cranberries from school menus because of the impact it would have on the demand for its product.

A health care professional commented that the food industry is capable of adapting to the new requirements by developing new products. Similarly, a food service staff member and a nutrition professional suggested that product availability for healthy snack options is currently lacking, and additional pressure should be placed on the food industry to stimulate supply.

Several commenters, including a school, a food manufacturer, school food service staff members, and a trade association, urged FNS to investigate how long it would take manufacturers to reformulate and repackage products. These commenters requested that FNS allow for an adequate implementation period to allow for product reformulation. A school commented that manufacturers do not currently have items in specific package sizes that would meet some of the proposed competitive food standards, and suggested that repackaging products to comply with the rule could take up to 2 years. A food manufacturer recommended a transition period of 36 months in order to mitigate costs incurred by the food industry and schools.

A couple of commenters, including a professional association and a school food service staff member, suggested that the Federal competitive food rules should supersede State and local rules for competitive foods and beverages. The school food service staff member stated that having one set of standards would reduce the cost impact on food manufacturers and ease the impact on consumer prices. Similarly, the professional association urged that manufacturers would be overly burdened by having to produce products that accounted for multiple regulations in multiple states.

#### **18.4.4 Impacts on vendors that supply food items to schools**

Approximately 20 submissions addressed the impact of the proposed rule on vendors. Most of these commenters suggested that the proposed rule would negatively impact vendors that supply food items to schools. These commenters, including a food service industry commenter, a school food service staff member, and trade associations, claimed that the proposed rule would hurt sales, threaten business viability, limit vending options, result in higher prices for snacks, increase distributor costs, and reduce vendor participation in supplying schools with food items.

A vending company commented that vending companies do not have nutrition experts on staff. As a result, the commenter recommended that FNS certify food items that meet the nutritional requirements of the proposed rule in order to reduce the burden on vendors associated with tracking and verifying compliance. Similarly, an advocacy organization recommended that vendors should be included in educational outreach efforts to ease implementation of the new rules and to minimize confusion.

A couple of individual commenters suggested that the proposed competitive food requirements could influence vendors' supply of healthier options to schools.

#### **18.4.5 Other private sector impacts**

Approximately 50 submissions addressed other private sector impacts associated with the proposed rule. A food service company asserted that the proposed competitive food requirements would have financial and economic implications on school food service operations nationwide. This commenter stated that these impacts would affect jobs, industry, and the financial solvency of schools and food service management companies. An individual commenter asserted that the rule would send students off-campus to eat, thereby benefiting local businesses at the expense of school programs. Another school food service company asserted that the proposed rule would affect multiple-year contracts that food service

management companies have negotiated with SFAs. The commenter stated that the proposed rule would disrupt the cost basis of these contracts, and would force termination of the contracts. This commenter suggested that the competitive foods rule should allow existing contract provisions to remain valid for the term of the contract, or recommended that FNS extend the implementation period of the rule to allow existing contracts to continue for their full term.

A commenter from the farming industry asserted that the standards for dried fruit would have a significant impact on the commenter's cranberry farm. The commenter explained that the proposed rule would affect the demand for cranberries, which would negatively affect the commenter's business.

#### **18.4.6 Other comments about costs**

Approximately 60 submissions raised other comments about the costs of the proposed rule. Many commenters, including a school food service company, school food service staff members, and individual commenters, suggested that some aspects of the proposed rule would increase food waste. The school food service company specifically expressed concern about increased labor costs, food costs, and food waste under the proposed requirements regarding accompaniments. A school food service staff member suggested that the proposed restrictions on the a la carte sale of NSLP/SBP side items and entrees would be burdensome because of food waste and the labor time to maintain two separate sets of food regulations.

Several commenters, including a food manufacturer, school food service staff members, and individual commenters, suggested that USDA mitigate the cost impacts of the proposed rule on school meal programs by providing financial incentives and additional funding for complying with the competitive food standards. Some of these commenters called for this action because they considered the proposed rule to be an unfunded mandate on schools.

Other commenters provided industry or program-specific input. A food manufacturer commented that manufacturers, distributors, and school systems have made significant investments in resources to meet current school bids under existing contracts for the 2013-2014 school year. This commenter asserted that enacting competitive food standards that did not exclude this upcoming school year would make school districts liable for breaches of contract with manufacturers and distributors. A trade association argued that the proposed nutrition standards for competitive foods would not result in a more expensive mix of foods. This commenter asserted that research shows that the DGA's daily recommended nine servings of fresh fruits and vegetables can be purchased for \$0.88 to \$2.18. Another industry association commented that the proposed rule would make it more difficult for school food programs to follow "Buy American" requirements.

Several commenters suggested that the proposed rule would negatively impact school clubs. A food service industry commenter recommended that USDA exempt career and technical education-based operations from the competitive foods standards. This commenter expressed concern that the proposed rule would threaten the viability of these school-based programs because they would not be able to sell the foods that the students produce.

#### **18.5 Other comments about RIA**

Approximately nine submissions raised other comments about the RIA. Some commenters, including a professional association, a school district, and a school food service staff member, made general statements about the impacts of the proposed rule. One of the commenters urged FNS to recognize the far reaching impacts of the proposed rule. Another commenter asked FNS to consider the impact the proposed rule would have on the diverse set of school programs. A school food service staff member

recommended that FNS perform more research on the impacts of the proposed rule before implementing any changes.

An advocacy organization cited research on strategies that the commenter asserted schools and district could use to minimize the impact of the proposed rule. These strategies included strong leadership, engaging students, and redesigning cafeterias, among others.

A trade association pointed out that in a past publication, USDA ranked raisins as the most economical dried fruit. The commenter argued that raisins, therefore, would be a cost-effective addition to school meal and snack programs.

A food manufacturer asserted that the cost-benefit analysis, financial assumptions, justification for minimal financial impact, and supporting data (including examples of states which have successfully implemented programs to improve nutrition with no financial impact) are only valid under the proposed Alternative C2 sugar limit ( $\leq 35\%$  of weight from total sugars), which is the sugar limit under which schools with competitive food standards have been operating. This commenter stated that Alternative C1 (proposing to limit total sugars to  $\leq 35\%$  of calories) is the newly released IOM recommendation and renders the cost-benefit analysis and FNS's assertion of minimal financial impact invalid.

## **19. Regulatory Flexibility Analysis (RFA)**

### **19.1 Agree with Initial RFA**

No submissions addressed this issue.

### **19.2 Disagree with Initial RFA**

No submissions addressed this issue.

### **19.3 Impact on small SFAs/schools**

Approximately three commenters addressed the impact of the proposed rule on small SFAs or small schools. A school food service staff member commented that a small or medium sized school district does not have sufficient resources to carry out the required calculations to approve items, and asked that FNS simplify the requirements. A State government agency referred to the proposed recordkeeping and calculation requirements as complex and expressed concern regarding the labor and fiscal burden that they would impose on very small entities. Another school food service staff member recommended that FNS consider the impact on small, rural school districts because of the unique dependency of families on school breakfast and lunch programs in these communities.

### **19.4 Impact on small food industry entities (e.g., manufacturers, wholesalers, distributors, vending machine operators, food service management companies)**

Approximately eight submissions addressed the impact of the proposed rule on small food industry entities. Several commenters, including a nutrition professional, a food service industry representative, trade associations, and a food industry representative discussed the negative impacts the proposed rule would have on small food industry entities. Specifically, the commenters suggested that small entities would incur significant costs to comply with the proposed requirements (e.g., re-packaging and re-labeling), which they asserted could drive some small vendors out of business. For example, a trade association commented that the cost of formulation changes that would affect the ingredient lists would

be high for small companies because it is costly for small companies with many different products to change product labels. A nutrition professional commented that his/her school district purchases competitive snacks from a small local vendor franchisee who would have difficulty reformulating to comply with calorie limits.

One trade association suggested that FNS did not adequately assess the impact on small businesses within the food industry. This commenter asserted that some small businesses rely heavily upon providing products used in fundraising and may find that a large portion of their sales would be limited under the proposed standards. This commenter further stated that the analysis in the All Foods NPRM does not adequately represent what revenue losses schools may face, and asserted that fully understanding the impact that fundraising and the sale of competitive foods has to small businesses, schools, and school groups is vital to adequately address the impact of the proposed competitive food requirements.

Another industry association argued that the proposed rule would place an undue burden on the vending industry, specifically those operating small businesses. The commenter agreed with FNS that the proposed rule would have a significant economic impact on a substantial number of small entities. As a result, this commenter urged FNS to perform a Final RFA. The commenter stated that some small vending operators rely solely on school sales for their income while others rely on it for the majority of their income. This commenter asserted that the impacts associated with the proposed rule on small vendors would include lost revenue, modified product lines, lost capital (equipment and vehicles), and lost jobs. To mitigate the impact, the commenter recommended that implementation of the final rule should be phased-in over at least a 3-year period. According to this commenter, such a phase-in would ease the impact on vending operator's income.

A small vending company asserted that the proposed competitive food requirements would force it to reduce its operations, which would reduce overall sales and cause it to lay off 15% of its staff. This commenter suggested that FNS either enact less restrictive standards or delay implementation, which might help manufacturers to produce necessary products. Similarly, another small vending company owner commented that its viability would be threatened because healthier alternatives do not sell as well as other snacks.

A trade association and food manufacturer asserted that the proposed rule would negatively impact small businesses involved in developing tea-based beverages. These commenters stated that the proposed competitive food requirements would adversely affect these small businesses and their distribution partners because they would restrict some tea-based products from being sold during meal periods.

#### **19.5 Reasonable alternatives to reduce small entity impacts**

No submissions addressed this issue.

#### **19.6 Other comments on impact on small entities**

No submissions addressed this issue.

### **20. Other issues related to the rule**

#### **20.1 Other comments on regulatory text (issues not addressed above)**

Approximately 190 submissions provided comments on the regulatory text that was not addressed in a previous section of this summary. A couple commenters suggested consistent use of terminology. For



example, a State department of education stated that the proposed rule used both the term entrée and main dish. A different State department of education asked that the definition for grade levels from the HHFKA be used, noting that the definition of age and grade group is necessary for accurate evaluation and compliance.

A trade association requested that USDA remove the regulatory provision that requires a medical or parental statement of a child's intolerance to milk products (7 CFR 210.10(g)). This commenter also thought that students should have the freedom to choose any beverage offered because schools are not reimbursed for beverage sales. Lastly, individual commenters and school food service staff members argued that because the variety of service locations, afterschool snacks should not be included in the proposed rule. An individual commenter stated that the proposed rule goes beyond the January 25, 2013 revised FNS Memo SP 10-2012ar6.

## **20.2 Comments/concerns addressing specific products**

Approximately 30 submissions provided comments regarding specific products. Several individual commenters expressed their support for the allowance of dried cranberries and "craisins" as competitive foods. A State Governor expressed concern about his State's dairy and cranberry farmers and asked that the competitive food and beverage requirements allow the sale of dairy and cranberry products.

A few commenters discussed dairy products. Two dairy industry associations supported the sections of the proposed rule that encourage the consumption of dairy products. A dairy advocacy organization asserted that dairy products contain nutrients of concern identified by the DGA and encouraged USDA to include dairy products options (e.g., milk, yogurt, and cheese) for foods offered at schools. This commenter went on to state that pizza and smoothies made with low-fat dairy products could be nutritious a la carte options. The commenter discussed the nutritional makeup of pizza and the potential for pizza to be a low fat, low sodium, and whole grain containing food. This commenter stated that the pizza industry has created products that meet nutritional guidelines.

Some food industry commenters, individual commenters, and an academic commenter provided comments on specific food and beverage products. For example, a beverage manufacturer argued that their natural, lower-calorie beverage could replace the sports drinks and 100% juices offered at schools. An individual commenter stated that flavored drinking straws would be an alternative to offering flavored milk and would reduce plain milk waste. A food manufacturer argued that beef jerky should be considered an option for snack time because it is a good source of protein and is also low in fat and calories. This commenter also asserted that the proposed sodium limits would remove the item from schools because reformulating the sodium content to 200 mg per serving would introduce concerns for quality and food safety.

A beverage industry commenter argued that they produce a beverage line specific to the needs of students (no and low-calorie and naturally-occurring amounts of caffeine). This commenter suggested that instead of listing specific types of beverages that would not be allowed in schools, USDA should encourage the beverage industry to create beverage options that would meet competitive food and beverage standards.

A school food service staff member requested the addition of a provision that would not allow homemade foods to be brought to schools. This commenter reasoned that without information about nutrition information and ingredients of these foods, there is a danger to students with food allergies and potential for the food to not meet the nutrient standards.

Additionally, a few commenters asked for clarification with regard to applicability of their products to the proposed rule. A food manufacturer expressed concern regarding the proposed competitive food

requirements' effect on the sale of breakfast items packaged in bulk and asked for clarification of how the competitive food standards would apply to foods that are sold and served in multiples, such as pancakes and waffles. A beverage industry commenter, who stated that their juice product was previously exempt, asked how the proposed competitive food and beverage standards would change the exemption status of their product. A State department of education asked how baked potato chips would be classified in the nutrient standards. A trade association supported the inclusion of soy products in schools. An academic commenter asserted that "Fryolators" should not be used to prepare competitive foods sold in schools.

An advocacy organization expressed their concern regarding the amount of red and processed meats offered in schools, stating that epidemiological studies have associated the regular consumption of red meats and processed meats with cancer. This commenter requested that USDA recommend a reduction in the amount of red and processed meats made available in schools and that USDA educate schools on how to provide healthier protein foods (i.e., lean red meat and non-meat protein sources). Similarly, a few individual commenters urged USDA to offer vegan options at schools.

An industry association commented that the proposed competitive food requirements would restrict the sale of sugar-free chewing gum products. The commenter provided references that it claims states that sugar-free chewing gum helps maintain oral and dietary health.

### **20.3 Student food preferences**

Approximately 170 submissions discussed student food preference with regard to the proposed competitive food and beverage standards. Several individual commenters, school food service staff members, teachers, students, a nutrition professional, and a food manufacturer commented that to ensure the healthy food options are purchased and consumed, a balance of healthy and unhealthy foods should be offered. Similarly, a few individual commenters asserted that if foods students prefer are not offered in schools, students would forego purchasing foods at school and spend their money on unhealthy snacks from stores off campus. Some commenters, including an advocacy organization and individual commenters, expressed concern that the proposed standards would remove foods that students prefer and therefore reduce the students' intake of necessary calories and nutrients.

Several commenters, including teachers, school food service staff members, students, school districts, nutrition professionals, and individual commenters, expressed concern that the proposed competitive food requirements would remove the students' ability to learn to make choices about the foods they consume. A few individual commenters stated that students and parents should have the freedom to choose the foods that are consumed at school.

A few commenters, including a general advocacy organization, a school district, and individual commenters, discussed the need to provide appropriate portion sizes for students who participate in afterschool activities.

### **20.4 Request to extend comment period/issue a supplemental NPRM or interim final rule**

Approximately 1,220 submissions provided comments regarding either the NPRM public comment period or the issuance of a supplemental NPRM or internal final rule. Many commenters, including school food service staff members, a food manufacturer, and individual commenters, requested an extension of the public comment period for the proposed rule, claiming the need for additional time to review the materials and understand the potential effects of the rule. Several commenters, including an association representing school boards across the country, trade associations, food manufacturers, and individual commenters, requested that USDA extend the comment period for an additional 60 days. A State department of education requested an extension of 90 days.

Some commenters including a professional association, food industry commenters, an advocacy organization, school food service staff members, school districts, and individual commenters, urged USDA to issue an interim final rule so that any requested changes to the standards could be incorporated, if needed. Other commenters, including a professional association, school food service staff members, individual commenters, school districts, a State department of education, a food manufacturer, and advocacy organizations, urged USDA to publish an interim final rule that would be subject to an additional public comment period so as to allow for additional review and the opportunity for stakeholders to provide comments on any previously unrealized adjustments.

A school district and a professional association suggested that USDA publish revised proposed competitive food requirement for public comment.

## **20.5 Implementation/effective date**

Approximately 190 submissions provided comments regarding the implementation timeline or the effective date of the competitive food requirements. Some commenters, including a State department of education, an advocacy organization, and individual commenters, recommended USDA delay implementation of the final rule by 1 year, claiming that schools and SFAs would need time to adjust to economic and food system changes, and to allow time for training of personnel. A few commenters, including food manufacturers, individual commenters, and a nutrition professional, suggested delaying the implementation of the final rule (no time period recommended) until the impacts of the recently revised NSLP and SBP meal pattern requirements and nutrition standards have been realized.

Several commenters, including a school food service company, individual commenters, a vending company, a nutrition professional, and State departments of education, discussed the benefits of a phased in approach to implementing the proposed competitive food requirements, including time for manufacturers to reformulate and re-package their products, time for schools to make any adjustments to their processes, and time for students to accept the new products.

Some commenters provided recommendations for phase-in timelines. For example, a trade association commented that a 2-year implementation period would be sufficient. Some commenters, including school food service staff members, trade associations, and a school food service company suggested the phase in of the new standards occur over a 3-year period. Further, a professional association suggested that the phase in occur over 5 years. An industry association suggested that an implementation period of at least 18 months after the issuance of the final rule would be appropriate. A food manufacturer recommended that, in order to allow for acceptance of the new products and for school food service staff to realize the costs related to the new standards, a transition period of 36 months would be necessary. A few commenters, including school food service staff members and a professional association, suggested that a phase in of the standards begin with elementary school, followed by middle, and high schools.

Several commenters specifically discussed implementation timelines for the sodium limits for competitive foods sold in schools. Many commenters, including an advocacy organization, individual commenters, and school food service staff members, suggested a gradual phase in of sodium to allow for the acceptance of the new products by children. A State department of education, trade associations, food manufacturers, a professional association, an advocacy organization, and a school food service staff member, suggested that for consistency and ease of implementation, the proposed sodium standards should be implemented in a similar (10-year) timeline as NSLP and SBP sodium standards.

Arguing for a shorter implementation timeframe, several commenters, including advocacy organizations, a professional association, a school district, a consulting firm, and a food bank, stated that need for the

healthy foods and beverages is great. Therefore, these commenters urged USDA to quickly finalize and implement the proposed rule. Similarly, many commenters that expressed support for the potable water requirements, including advocacy organizations, requested that the water requirements be effective immediately upon the publication of a final rule or interim rule.

Furthermore, a few commenters, including food manufacturers and a trade association, urged USDA to consider the bidding dates that occur for schools, rather than the start date of the school year, when considering the implementation timeline of the proposed rule. The commenters explained that products need to be available for bid the January before the start of the school year.

An association representing school boards across the country recommended that the implementation of the proposed competitive food and beverage standards be delayed until the recording keeping and compliance burden to LEAs has been fully realized and funding resources are available. Lastly, a State department of education suggested that USDA discuss the implementation and enforcement of the proposed rule with the U.S. Department of Education and local education officials.

Out of concern for States with existing competitive food policies, a food manufacturer requested that USDA consider either one or both of two suggestions for implementation of the proposed rule. First, the commenter suggested that FNS exempt States with existing competitive food policies (California, Florida, Illinois, New York and Texas) from the Federal competitive food standards for 3 years. Second, this commenter suggested a phase-in approach for the Federal competitive food standards, starting with States that do not have existing competitive food policies. This commenter argued that this would allow evaluation of the impacts of the standards before States with existing competitive food policies have to change their programs. Similarly, a few individual commenters urged USDA to exempt the State of Texas from the Federal competitive food requirements based on its existing TPSNP, which includes guidelines on competitive foods.

#### **20.6 Request to hold public meeting(s)**

No submissions requested a public meeting.

#### **20.7 Suggestions for collaboration**

Approximately 40 submissions provided comments or suggestions for collaboration. Several commenters, including advocacy organizations, health care associations, nutrition professionals, a professional association, food industry commenters, and trade associations, volunteered to provide support to FNS in its efforts to develop and implement competitive food standards.

Some commenters, including advocacy organizations and a professional association, suggested that the technical guidance developed by USDA for SFAs and LEAs would benefit from the input of Federal agencies such as the U.S. Department of Education, CDC, and other entities. A trade association suggested that USDA collaborate with Federal agencies to assist with promoting healthy food programs. Similarly, an advocacy organization suggested that USDA work with other organizations to collect tools, resources and information that would allow States to learn from the best practices of experienced colleagues. A State department of education urged FNS to engage the U.S. Department of Education and, through that agency, local education officials in the implementation and enforcement of the competitive food standards. This commenter stated that the Federal competitive food requirements and the consequences for willfully violating the rules should be cross referenced in education policy because it would help education officials understand their responsibility for educating school personnel in the implementation of the new rule and in promoting overall compliance. A health care association

commented that State and territorial health agencies would be effective in supporting the implementation of the HHFKA.

In an effort to reduce the burden of identifying the whole grain content of foods, some commenters, including advocacy organizations, health care associations, and a school district, suggested that USDA work with FDA and industry to develop labeling of whole grain foods. Some of these commenters, including advocacy organizations and health care associations, suggested that additional collaboration occur with FDA with regard to labeling of added sugars.

Additionally, an advocacy organization suggested that USDA work with FDA to ensure that nutrients of concern are included in revisions of the Nutrition Facts label. A health care association suggested that FNS provide school food staff with training and guidance on how to determine if nutrients have been added to a food, for example, how to review ingredient lists for key words that identify sources of nutrients of concern and providing example of products that provide sufficient sources of nutrients of concern. Lastly, this commenter suggested that USDA encourage food manufacturers to make nutrient information about their products available.

## **20.8 Unfunded Mandates Reform Act**

No submission referred to the Unfunded Mandate Reform Act specifically; however, approximately 10 submissions referred to portions of the proposed recordkeeping and monitoring standards as “unfunded mandates.” For example a professional association and a few school food service staff members asserted that the proposal for SFAs to oversee competitive foods sold by the school food service is an unfunded mandate. This professional association argued that it is an unfunded mandate to ask SFAs to oversee personnel that are not under their authority. Similarly, another professional association claimed that the recordkeeping and monitoring requirements placed on the LEAs were unfunded mandates.

## **20.9 Federalism impacts**

Approximately five submissions discussed impacts of federalism. An association representing school boards across the country argued that the proposed competitive food requirements would introduce Federal oversight of the LEAs. An individual commenter suggested that competitive foods should be administered by States and that there is no Constitutional authority for the Federal government to administer the proposed rule. Further, a few individual commenters suggested that the decisions made about competitive foods should be made at the local level.

## **20.10 Consultation/coordination with Indian Tribal Governments**

No submissions provided comment with regard to consultation or coordination with Indian Tribal Governments.

## **20.11 Paperwork Reduction Act**

Approximately nine submissions from individual commenters and school food service staff asserted that the proposed regulation would impose added paperwork for schools. One school food service staff member suggested that the proposed rule was not in compliance with the Paperwork Reduction Act. Many submissions discussed an increase in administrative burden related to the recordkeeping and monitoring requirements proposed in the All Foods NPRM. These comments are summarized under section 18.4.2 (Administrative burden) and throughout section 15 (Monitoring).

## **20.12 Environmental impacts**

No submissions provided comment on the environmental impact of the proposed rule.

## **20.13 Additional issues not addressed in the NPRM**

Approximately 600 submissions addressed issues that are not otherwise noted above. Several commenters, including school food service staff members, a school district, a trade association, a nutrition professional, a food manufacturer, and State departments of education, suggested that the proposed competitive food requirements are too complicated and need to be flexible and simplified. In particular, one State department of education recommended that a simplified approach to competitive foods, and one that would be consistent with existing guidelines, would be to not allow FMNV to be sold on school campus during the school day and to require that competitive foods must not exceed 10% of calories from saturated fat. Food industry commenters argued that the proposed nutrition standards should be simple and practical in order to allow for flexibility for schools when implementing the standards. Further, a State department of education suggested that the complexity of the proposed regulations would likely cause confusion in schools attempting to abide by the new standards.

Several commenters, including professional associations, individual commenters, students, school food service staff members, school districts, advocacy organizations, food industry commenters, nutrition professionals, and a State department of education, expressed the need for alignment and consistency between existing NSLP/SBP meal pattern requirements and nutrition standards and competitive food requirements to allow for ease of implementation. In particular, an advocacy organization expressed support for USDA applying competitive food requirements to students by grouping them by elementary, middle, and high school because it was consistent with the age/grade groups in the current meal pattern requirement. A food manufacturer expressed concern that because the full impact of the NSLP/SBP meal pattern changes is not yet fully realized, the proposed competitive food standards would impose further challenges on schools and industry. An advocacy organization argued that consistent Federal standards would create consistency for product reformulation across the food and beverage industry, which would lead to a greater number of healthy products available to smaller districts. A trade association asserted that simplicity in the competitive food requirements would assist with consistency during the bidding season.

Some commenters, including school food service staff members, students, a nutrition professional, and individual commenters, suggested the need for an accompanying, coordinated nutrition education program to complement competitive food standards. A professional association and individual commenters commented that nutrition education for parents and students would assist in developing healthy eating habits when students are not at school. A school district and a health care association noted that nutrition education programs require funding.

A few individual commenters suggested that nutritional information be made available to parents and students to assist with their understanding of the nutritional content and empower students to make good choices. One individual commenter suggested that in addition to nutritional information, allergen information about the foods also be made available so students with food allergies can make safe food choices.

Other comments made with regard to the proposed rule include:

- A county department of public health requested that USDA consider oral health be considered when developing the competitive food standards.

- A school food service staff member expressed a desire for the competitive food requirements to take into consideration the diversity of communities and school wellness policies, and student needs, and asserted that the proposed rule reflected a “one size fits all” mentality.
- An academic commenter noted the importance of foods and beverages sold at schools to meet State and Federal food safety requirements.
- A trade association suggested that a monitoring system should be created to understand the impact of competitive food requirements on food waste and preferences.
- Individual commenters, a professional association, school food staff members, and nutrition professionals urged USDA to recognize that the decisions made by School Food Directors have the best interest of the students in mind.

## **21. Out of scope**

### **21.1 Comments on nutrition standards or meal pattern requirements in the National School Lunch and School Breakfast Programs**

Approximately 35 submissions addressed the NSLP/SBP nutrition standards and meal pattern requirements in the January 26, 2012 final rule. An individual commenter expressed support for the proposed All Foods Rule, but only discussed its approval of the new NSLP/SBP meal pattern and nutrient requirement changes. A food manufacturer commended USDA's work to develop the new NSLP/SBP requirements and USDA's ongoing assistance to communicate clarifying information about the standards and produce eligibility to State agencies and SFA operators.

In contrast, some individual commenters expressed dissatisfaction with the recently updated NSLP/SBP meal pattern requirements and nutrition standards. For example, as part of a submission from a class, one student stated that fewer students are participating in the NSLP than last year because of the recent changes to NSLP/SBP meal pattern and nutrition standards. Another student from this class and an individual commenter expressed concern that the recently enacted NSLP/SBP calorie restrictions result in school lunches not containing enough food to satisfy students' appetites.

Two food manufacturers urged USDA to permanently eliminate the weekly limits on grains and proteins served with the NSLP reimbursable meal. One of these food manufacturers asserted that by maintaining calorie limits, USDA could still protect the nutritional integrity of the school lunch standards while giving school nutrition professionals more flexibility. Similarly, an individual commenter expressed support for the SNA 2013 Legislative Issue Paper, which expressed support for the permanent elimination of the weekly limits on grains and meat/meat alternates served in the NSLP.

In this Legislative Issue Paper, SNA also urged a delay of the SBP modifications pending resolution of outstanding issues related to the school lunch meal pattern. A food manufacturer also urged FNS to slow the phase-in of the new SBP requirements until after the new NSLP requirements are integrated and broadly accepted. Further, upon implementation of the SBP modifications, the SNA 2013 Legislative Issue Paper and a food manufacturer recommended the elimination of the weekly limit on grains and also the allowance of full substitutability of meat/meat alternate for grains. A food manufacturer commented that a two-grain breakfast entrée is a necessity.

An individual commenter suggested that FNS should fund locally-sourced, seasonal produce to be a part of meal plans and commented that simply setting guidelines that dictate serving sizes and meal composition is not sufficient.

## **21.2 Comments on other Healthy-Hunger Free Kids Act of 2010 requirements**

Approximately five submissions addressed HHFKA provisions that did not relate to the proposed competitive food requirements. Some individual commenters addressed the HHFKA “equity in school lunch pricing” provision. For example, an individual commenter expressed support for the SNA 2013 Legislative Issue Paper, which requested that Congress amend Section 205 of the HHFKA, which it stated requires certain SFAs to increase their paid meal prices regardless of their financial solvency, by narrowing it to only those SFAs that have a negative fund balance at the end of the previous school year. A school food service staff member commented that because of these HHFKA-mandated paid meal price increases, students with money are purchasing competitive foods more, which sends a message that only low income children have to eat healthy.

A few individual commenters asserted that the recently updated NSLP/SBP cost more for schools to implement than the additional 6 cent reimbursement per meal provided for under the HHFKA.

## **21.3 Requirements for physical activity or other local school wellness policies**

Approximately 40 submissions addressed requirements for physical activity or other local school wellness policies. For example, some commenters, including professional associations, a school food service staff member, and an individual commenter, suggested that more focus needs to be placed on nutrition education and physical activity so that students can develop healthy eating habits and overall better health outside the school day. An advocacy organization and an individual commenter also urged FNS to encourage increased physical activity in schools. A weight loss company and an individual commenter stated that schools must educate students and parents on health and nutrition to address what children are eating outside of the school day.

## **21.4 Other out-of-scope comments**

Approximately 60 submissions addressed other issues that were beyond the scope of the proposed All Foods Rule. Some of these other out-of-scope issues addressed by commenters were the following:

- An individual commenter expressed support for the SNA 2013 Legislative Issue Paper, which urged Congress to require that USDA establish a consistent national policy on how to address the debt incurred by unpaid meal charges owed to the SFA by participants in the program.
- A food manufacturer expressed support for FNS’s announced pilot program to facilitate the use of Greek (strained) yogurt in CN Programs, but urged FNS to create a separate crediting standard for strained yogurt as a meat alternate, which it asserted reflects its higher protein content.
- An academic commenter recommended that USDA prohibit the marketing of food and beverages that would not be allowed under the competitive food requirements, suggesting USDA follow the model policy on this topic developed by the National Policy & Legal Analysis Network to Prevent Childhood Obesity. An advocacy organization also expressed concern about the advertising and marketing of junk foods in schools.
- Some commenters, including a health care association, a school district, and a school food service staff member, urged FNS to consider a minimum requirement of time for meal service to ensure that students have enough time to eat after they have been served their meal. A school district suggested that USDA should require all students to have a scheduled lunch period, stating that more and more students are not consuming breakfast or lunch to take additional courses. Citing a



*Final Summary of Public Comments Received on  
USDA's Nutrition Standards for All Foods Sold in School 02-08-13 NPRM*

study plate waste study that used length of the lunch period as an independent variable, the health care association suggested that school nutrition professionals and school administrators should work together to ensure that the school environment is conducive to healthy eating.

- Several commenters, including a food manufacturer, a nutrition professional, and individual commenters, urged USDA to consider enacting similar nutrition guidelines as those for the NSLP/SBP and competitive foods for the Supplemental Nutrition Assistance Program.
- A school food service staff member commented that USDA should work on ways to help cities start sports teams and gyms that cost nothing to participate.
- A student expressed opposition to the closure of two schools in her Pennsylvania school district.