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Submitted Electronically Via Regulations.gov

Julie Brewer
Chief, Policy and Program Development Branch
Child Nutrition Division
Food and Nutrition Service
P.O. Box 66874
Saint Louis, MO 63166

Re: Docket No. FNS-2011-0019; National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010; Proposed Rule

Dear Ms. Brewer:

I am writing on behalf of the American Fruit and Vegetable Processors and Growers Coalition (AFVPGC) a national organization whose members are family farm growers of fruits and vegetables that are grown *for processing*, our suppliers and the food processors who prepare those products for retail distribution and sale. Members of AFVPGC supply canned, shelf stable fruit and vegetable products to all of the School Meal & CACFP Programs (Breakfast, Lunch, Summer, Supper), directly to individual school food authorities (SFAs), state food distributing agencies (SDA's), and food service distributors.

AFVPGC is pleased to offer these comments concerning the Food and Nutrition Service's (FNS's) Interim Final Rule (IFR) on foods sold in schools other than those provided under the National School Lunch Program (NSLP) and School Breakfast Program (SBP) (so-called "competitive foods").

AFVPGC fully supports the USDA efforts to encourage healthy eating for children. This extends to both the Reimbursable Meal Programs, as well as the new Interim Final Rule, published by the Food and Nutrition Services (FNS) in the June 28, 2013 edition of the Federal Register, entitled "Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Act of 2010 (HHFKA)."

AFVPGC submitted comments during the Proposed Rule period and fully supports those previously identified as well as some new concerns that we will identify below that were not apparent with the Published Proposed Rule nor addressed adequately in the published Interim Final Rule.

Summary / Key Areas of Concern / Recommendations for Consideration

AFVPGC requests the Department consider these key points:

- AFVPGC believes that all fruits and vegetables, including canned vegetables, should be exempt from the competitive food standards without further exemption language added.
 - AFVPGC requests the examination of the Exemption language for Canned Vegetables and requests changes be made that are more applicable to canned vegetables, which would allow all canned vegetables to qualify for the exemption.
- AFVPGC requests that ANY menu item (both entrées **and side dishes**), should be allowable under the “competitive food program,” without restriction.
- Alternatively, AFVPGC requests the expansion of the Entrée Definition to include the following combination food: **Protein (Meat/Meat Alternate)/ Whole Grain Food / Fruit &/or Vegetable**. This combination definition of an entrée is currently missing.
- AFVPGC suggests that “all eligible foods offered in the Reimbursable Meals Program be further defined as an “extra sale,” not a “competitive food sale;” hence, exempt from further restriction by additional regulations with the IFR. Furthermore, all foods offered that are NOT part of the Reimbursable Meal Program would be defined as a “competitive” food.
 - The competitive food standards should be consistent with, and not more restrictive than, the standards for foods served as part of the reimbursable meals
- AFVPGC requests and supports a delay in implementation of the standards as requested by the School Nutrition Association and other associations familiar with the burdens this new policy will place on stakeholders, either one or two years, based on corresponding rationale.
- AFVPGC also requests that the Department reopen the Comment Period for the IFR at which point the Rule has been implemented, so that additional feedback and information can be gained and evaluated, in order to quickly affect change in key areas can as needed.

Based on the current IFR definition of the Exemption for Canned Vegetables, many of our vegetable products would not be eligible under the current exemption definition. The Canned Vegetable definition language in the IFR under “Exemption to the standard” is problematic. It appears the intent was to exempt all fruits and vegetables from the General Standards. We are in full support of the intent; however, further restrictive language related specifically to “canned vegetables” may inadvertently eliminate all canned vegetables from the exemption. We are unsure of the reason for the restrictive (and possibly

incorrect) definition placed on the defined, allowable “added ingredients” for Canned Vegetables.

- *Currently Stated: Canned vegetables with no added ingredients except water or that contain **a small amount of sugar** for processing purposes to maintain the quality and structure of the vegetable are exempt from all nutrient standards.*
- **Rationale:** We are unaware of any canned vegetables that contain only water and sugar for processing purposes. The more standard processing additives for canned vegetables vary and can include any combination, of natural ingredients like sodium, sugar, citric acid, but not just sugar and water alone. This includes the low sodium vegetables packed for the USDA Foods Program. In addition, these additives are usually less than 5% of the total net weight of the product.
- **Rational:** As a part of the canning process, it is often necessary to add small amounts of other natural ingredients (sodium, citric acid, etc.), as processing aids, to insure shelf stability, enhance flavor, and preserve texture. In addition, in an effort to respond to the changing needs and requirements of the Child Nutrition Reimbursable Meals Program, AFVPGC has recently made significant formula changes to many products to create great tasting, low sodium items (up to 68% less); however, with the removal of sodium, it is necessary to add other natural ingredients like potassium, herbs, and seasonings to accomplish this objective.
- **Recommendation:** Allow all canned vegetables to be exempt without further restriction. Alternatively, revise the currently stated language on Canned Vegetables to:
 - Canned vegetables that contain water and a small amount of added ingredients (<5%) for processing purposes, to maintain the quality and structure of the vegetable are exempt from all nutrient standards.
 - Alternatively: Any Canned Vegetable that is offered as a part of the Reimbursable Meals Program would be exempt from the standards.
- **Impact:** Potentially, as currently written, all canned vegetables would be ineligible for the exemption and subject to further scrutiny under the General Standard. While they would potentially qualify on their own merits, it creates inconsistencies for the program operator to define eligibility for canned vegetables different from the Reimbursable Meals program and different from “fresh” which would be exempt. It seems unnecessary and burdensome and may bias operators to use only fresh vegetables since they are exempt from the general standards.
- **USDA Foods Impact:** Popular USDA Group A Commodity Tomato Products, like Spaghetti Sauce and Salsa, would also be ineligible for the

exemptions as written currently, based on current specifications. This may also impact other USDA Foods Canned Vegetables as well.

- Additional Rationale: AFVPGC applauds FNS for clarifying that frozen fruits with added sugars that can be considered to be frozen fruits in light or extra light syrup are included in the exemption from all nutrient standards for fresh, frozen, and canned fruits and vegetables. While we agree that frozen fruits with added sugar should be exempt, AFVPGC believes that all forms of fruits and vegetables should be exempt from the competitive food standards. By limiting the exemption to only those foods with no added ingredients except water, the IFR requires further analysis for canned and frozen fruits and vegetables to determine whether these foods qualify for the exemption. If a fruit or vegetable is not covered by the exemption, the school must then confirm that all competitive food standards are satisfied. While the food will likely either fall within the exemption or satisfy all competitive food standards, AFVPGC believes all fruits and vegetables should be exempt from the standards and not subject to further scrutiny under the IFR, as these are precisely the types of foods that should be encouraged in school meals.
- PROPOSED: Canned (and frozen) vegetables are healthy, cost-effective, convenient options and should not be put at a competitive disadvantage. It could negatively impact the use of canned (and frozen) vegetables in Reimbursable Meals, as well as A La Carte. We would propose that the playing field be level and that **all vegetables (all forms) be exempt from the general standards without further delineation.**

AFVPGC would like to examine another key area of concern: The “surprise” removal of Side Dishes, as a part of the proposed Reimbursable Meal Exemption for Entrees & Side Dishes. This unexpected change in the IFR has created many questions and concern.

AFVPGC requests that the Department reinstate the original exemption proposed and that ANY Reimbursable menu item (both entrées and side dishes), should be allowable (and exempt from General Standards) under the “competitive food program,” without restriction.

Proposed Rule Note: The potential option/alternative that side dishes would not be included as a part of the “Reimbursable Meal” exemption in the IFR was not offered in the Proposed Rule; therefore, comment could not be given as to the potential impact of this highly problematic scenario, creating burdensome and unwieldy operational impacts.

Rationale: The Department notes in the IFR that based on the split support in the number comments received “for and against” the originally proposed exemption for Entrees & Side Dishes, it decided to compromise and allow “entrees” to be exempt, while removing the “side dish” exemption.

Unfortunately, it is almost operationally impossible to effectively allow an exemption for the Entrée, but not for the Side Dishes, also served as a part of the Reimbursable Meal on the same serving line on the same day.

It appears that definitions for an Entrée are currently offered; however, none are provided for Side Dishes. So the assumption is that Side Dishes would be anything that is not defined as an entrée. Just the use of the different terms (Entrees and Side Dishes) is confusing and inconsistent when those same terms are NOT part of the required Reimbursable Meal component definitions. Maybe the Department could consider keeping the same nomenclature (Proteins / Grains / Fruits / Vegetables) and applying the exemptions fairly across all of those components. This adds consistency and eases the burden of implementing two different sets of definitions for the same items on the same serving line.

The defining difference would be when those items are selected AND count as a Reimbursable Meal and when those same items may be selected individually or in combination with other items that don't qualify for a Reimbursable Meal (i.e. no fruit or vegetable is selected). Under the current scenario, two sets of rules would apply to the same items on the same serving line.

Example: It is highly possible that a popular Vegetable Meal Component on the Reimbursable Meal (i.e. a Salad), now defined as a Side Dish if purchased separately, would not qualify for the Reimbursable Meal exemption. A salad made of fresh vegetables only would be "exempt," but the salad dressing would be subject to the General Standards. Typically, a salad and dressing are offered as a Reimbursable Meal selection. Hence, a Side Dish Salad could now only be served without dressing and with fresh vegetables to qualify for an exemption.

Additionally and alternatively, AFVPGC requests the Department consider the expansion of the Entrée Definition to include the following combination food: **Protein / Whole Grain Food / Fruit &/or Vegetable (or Meat/Meat Alternate and Whole Grain Food and Fruit or Vegetable)** This combination definition is currently missing and is important if only the Entrée exemption remains. Many entrée food items are made up of the items listed in the missing combination above (example: Spaghetti and Meat Sauce)

- a. *An Entrée item was defined in §210.11(k)(1) of the proposal as an item that includes only the following three categories of main dish food items:*
 - i. *A combination food of meat or meat alternate and whole grain rich bread;*
 - ii. *A combination food of vegetable or fruit and meat or meat alternate; or*

- iii. *A meat or meat alternate alone, with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters.*
- iv. *With an additional exception added for meat snacks, and a technical correction to change “whole grain rich bread” to “whole grain rich food” to ensure that entrées with pasta, rice and other grain items are included as intended.*

Finally, AFVPGC applauds USDA for listening to comments that were submitted during the Proposed Rule process for “All Foods Sold in School” and making adjustments in the IFR that will reduce costs and unnecessary burdens, like the change to eliminate the requirement for Pre-portioned Accompaniments. We hope that USDA will continue to listen to the comments and feedback from the experts, like K12 operators and K12 Industry, who “live and breathe” in these programs every day, and who have taken the time to counsel and educate themselves on the issues and challenges presented in the IFR on many levels.

Over the last 120 days, much research and learning has been acquired related to both the pending IFR and the results of the first year of implementation of the Reimbursable Meals Final Rule during SY 12/13. There is much to be gained from evaluating those findings and the pending impact of the published IFR, as it relates specifically to those issues already identified and uncovered in this timely release of information.

Brilliant, committed, and passionate stakeholders across the nation share your vision for increased access to Healthy Foods and improved standards “outside” of the Reimbursable Meal program; however, as you well know, it is the School Nutrition Program Operators who have led the way in offering Healthy Meal options for decades as a part of the Reimbursable Meal Program and their A La Carte offerings. It is critical that those programs continue to be viable and are viewed by the students as attractive, so that participation does not continue to decline, as we have seen this past year. Declining participation is the single largest and over-riding concern that negatively impacts every stakeholder, not the least of whom is the students. We know Child Nutrition Programs currently offer the best options for students to get access to Healthy Foods on campus.

The only way to meet the sustainability goal is through consistency of regulations, where the IFR will work in tandem with the already stringent and restrictive Reimbursable Meals Program. USDA must keep an eye on the immense operational and administrative burden that the IFR will present to already challenged Child Nutrition Programs (and Industry). The IFR has inherent differences in the way it is currently written as an entirely different set of rules and terms via separate guidelines for foods already subject to stringent guidelines in the Reimbursable Meals Program. These rules and guidelines make sense when not being applied to the same foods already subjected to a different set of rules.

We would like to propose one single thought/action that would potentially “fix” the most problematic and inherent issue within the current IFR as it relates to Child Nutrition Program Operators: **Redefine what foods are “competitive” and what foods are not.** Potentially ANY item offered as a part of the Reimbursable Meal should be eligible to be sold at any time and should not be considered a “competitive food.” Rationale: These items have already been subject to the stringent guidelines of the Reimbursable Meals.

We challenge the Department to think about the fact that an extra sale of any item already being offered, at any time, as a part of the Reimbursable Meals Program is really NOT a “competitive” food sale. **Therefore, we propose an easy “fix”: Any item offered on the reimbursable meal (grains/ proteins/ fruits/ vegetables) would be exempt from additional scrutiny (period) without further restriction or delineation.**

Alternatively, we previously offered additional feedback on specific standards that may still be problematic in the IFR should the Department choose to take an alternative route to making some key changes.

The single largest issue that remains in this Interim Final Rule continues to be the fact that the standards set forth are inconsistent with the pre-existing standards for the new reimbursable meals program. If the IFR standards were being written for “All Food Sold in Schools Outside of the Child Nutrition Programs,” then they might make a lot more sense to your Child Nutrition Partners. Instead, it appears the “one shoe fits all” concept has been proposed; hence, one set of standards have been applied across all potential entities/ operators /solicitors of food products on campus. The current IFR standards would have far more application should they be applied to all entities “NOT” already under strict USDA guidelines to offer and operate a healthy school meals program.

The dilemma seems to arise in the fact that the IFR attempts to deliver ONE set of standards to a very wide range of entities who may offer food or beverage during the school day on campus. Many of these providers have no knowledge of current Healthy Food Standards, nor are under the purview of any regulatory requirements to offer them. Non School Meal operators need specific guidelines, like what has been provided in the IFR, for the very limited and defined products they may also wish to offer students during the school day (i.e. “competitive foods”). Therefore, the IFR strict standards make so much more sense when applied to those entities on the School Campus that do not already operate Healthy Meal Programs.

However, your Child Nutrition Program Operator partners, and Industry, have been working tirelessly to reformulate and serve products that meet every new standard (current and evolving) that has been imposed over the last few years, particularly those implemented during SY12/13 (with the implementation of the new meal pattern). Child Nutrition Program Partners/Operators should be

EXEMPT from any additional rules /standards, particularly IF the food products already qualify under the Reimbursable Meal Pattern! There should be no additional scrutiny or restrictions to offer those products outside of the Reimbursable Meal. **Technically, these items should not even be classified as “competitive foods” since the sale of these foods “outside” of the reimbursable meals program can be accounted for primarily as “extra healthy food” that is being sold to the students.**

Example: A High School Student buys a Reimbursable Meal that meets the new requirements. The new meal could potentially be less food than what was offered in the past due to the Maximum Calorie Limits. Should the student desire more of that same food, it currently is classified as a “competitive food sale.”

Question: Why should an extra serving of the entrée and/or side dish be subject to a different set of rules?

With the reduction in quantity of food being offered, particularly at High School, as a result of the New Meal Pattern, the ability for the schools to offer additional healthy food at additional costs is vital to student participation and sustainability of the program.

In addition, I am not sure if USDA is aware that in the evolution of improving School Food, many operators across the country offer only Reimbursable Meal Items as A La Carte Items. This includes BOTH Entrees AND Side Dishes. This is a key fact in understanding the burden and the impact the IFR will have on those programs that are already offering Healthy Foods to their students. Burdensome and inconsistent regulations between the Reimbursable Meals Program and Competitive Foods SERVED IN THE CAFETERIA during Meal Periods will only create confusion, unnecessary compliance burdens, and challenges that could continue to negatively impact participation.

Thank you for taking the time to review and consider our comments to the Interim Final Rule on All Foods Sold In School. If AFVPGC can assist the Department with additional information, please do not hesitate to contact us.

Sincerely,



Denise A. Bode, Esq.
For the **American Fruit and Vegetable Processors and Growers Coalition**

Cornerstone Government Affairs
405) 818-1775 mobile | (202) 448-9539 direct
300 Independence Avenue, SE
Washington, DC 20003
dbode@cgagroup.com