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MEMORANDUM

January 25, 2012

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: USDA Releases Final Rule on Nutrition Standards in the National School Lunch and School Breakfast Programs

Today, the U.S. Department of Agriculture (USDA) released the final rule, "Nutrition Standards in the National School Lunch and School Breakfast Programs." The rule seeks to update school meal standards as required by the Healthy, Hunger-Free Kids Act (HHFKA), which was signed into law on December 13, 2010. The rule is effective 60 days from publication in the Federal Register (January 26, 2012), but several of the requirements in the rule have staggered implementation deadlines. USDA estimates implementation of the new meal requirements will cost \$3.2 billion over the next five years.

First Lady Michelle Obama, Secretary of Agriculture Tom Vilsack, and celebrity chef Rachael Ray announced the release of the final rule today at an elementary school in Alexandria, Virginia. Also today, Under Secretary for Food, Nutrition and Consumer Services Kevin Concannon and Assistant White House Chef Sam Kass hosted a national media conference call to highlight the new nutrition standards. The call mainly reiterated points highlighted in the press release, namely that the final rule:

- Ensures students are offered both fruits and vegetables every day of the week;
 - Substantially increases offerings of whole grain-rich foods;
 - Offers only fat-free or low-fat milk varieties;
 - Limits calories based on the age of children being served to ensure proper portion size;
- and

- Increases the focus on reducing the amounts of saturated fat, trans fats and sodium.

During the question and answer period, Under Secretary Concannon and Mr. Kass fielded questions regarding crediting, cost, offer versus serve, and starchy vegetables. These topics and other major provisions of the final rule are briefly summarized below.

Rule Overview

Effective Date

- The rule is effective 60 days from publication in the Federal Register (January 26, 2012). Certain provisions of the rule are phased in over time, including some breakfast requirements, whole grain requirements, and sodium levels.
- School Breakfast Program (SBP) requirements must be implemented beginning with the start of School Year (SY) 2013-2014, or as otherwise specified.
- Requirements mandating that all flavored milk be fat-free and limiting milk to only fat-free and low-fat varieties take effect in SY 2012-2013.
- Schools are encouraged to implement the new standards as soon as they are able.

Cost

- USDA estimates implementation of the new meal requirements to cost school food authorities \$3.2 billion over the next five years.
- Regarding resources for implementation, USDA estimates an additional \$7.5 billion in non-Federal revenues over five years from provisions in HHFKA –
 - \$5.3 billion from a la carte foods;
 - Over \$300 million in additional payments from paid lunches; and
 - Over \$1.9 billion in additional revenue from making school meals more competitive with a la carte foods.
- USDA estimates that the interim rule “National School Lunch Program: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010” will increase participation in school meals programs by 800,000 children.
- USDA also cited the six-cent performance-based reimbursement increase included in HHFKA.

Menu Planning

- The rule establishes Food Based Menu Planning as the single menu planning approach for the National School Lunch Program (NSLP) in SY 2012-2013.
- Meals are to be planned using groups of grades K-5, 6-8, and 9-12.

Fruits and Vegetables

- The rule establishes fruits and vegetables as separate food components.
- Fruit is required at lunch beginning in SY 2012-2013.
- Schools are required to offer 1 cup of fruit daily at breakfast beginning in SY 2014-2015.
- The rule requires fruit that is fresh; canned in fruit juice, water, or light syrup; frozen without added sugar; or dried.
- Schools may offer 100 percent juice, but no more than half of the per-meal fruit component may be juice.
- The rule states that “Schools should offer fresh fruit whenever possible.”
- Vegetables are divided up into five subgroups: dark green, red/orange, bean and peas (legumes), starchy, and other. All subgroups are required to be offered over the course of a week.
- Servings of starchy vegetables are not limited.
- Schools have the option to offer vegetables in place of all or part of the required fruit component, but starchy vegetables may be offered as substitutes only after two cups of non-starchy vegetables have been offered.
- The rule allows fresh, frozen, and canned vegetables to be used.

Meat

- In the NSLP, the rule requires schools to offer a minimum amount of meat/meat alternate daily (1 oz. eq for grades K-8, 2 oz eq. for 9-12), and provide a weekly required amount for each age/grade group.
- The rule does not require a daily meat/meat alternate in the SBP.

Whole Grains

- Whole grain is defined as “grains that consist of the intact, ground, cracked, or flaked grain seed whose principal anatomical components – the starchy endosperm, germ and bran – are present in the same relative proportions as they exist in the intact grain seed.”
- NSLP – in SY 2012-2013 and SY 2013-2014 whole grain-rich products must make up half of all grain products offered to students. In SY 2014-2015 and beyond, schools must offer only whole grain-rich products.
- SBP – schools must offer the weekly grain requirements and half of the grains as whole grain-rich beginning July 1, 2013 (SY 2013-2014). All grains offered in the SBP must be whole grain-rich in SY 2014-2015 and beyond. Once schools meet the daily minimum grain quantity required (1 oz. eq. for all age-grade groups) for breakfast, they are allowed to offer a meat/meat alternate in place of grains.
- The rule states a whole grain-rich food must contain at least 51 percent whole grains and the remaining grain content of the product must be enriched. Due to difficulties in

determining the actual whole grain content of many grain products, the rule outlines criterion for schools to use to identify whole grain-rich foods.

- USDA states that the industry standard of identity for whole grain product (14.75 grams) will be addressed in subsequent guidance.
- The rule reduces the number of allowable grain-based desserts from five to two per school week.

Crediting

- Beginning in SY 2012-2013, snack-type fruit products will not be permitted as part of the reimbursable meal.
- Under the rule, tomato paste will be credited as a calculated volume based on the whole food equivalency.

Sodium

- The rule seeks to reduce sodium levels in NSLP and SBP by 25 to 54 percent by SY 2022-2023. Please see the chart in the Appendix that contains the specific reduction levels and phases.

Milk

- The final rule allows flavor in fat-free milk only, and only fat-free and low-fat milk in the programs. Flavored low-fat (1 percent or ½ percent) milk is not allowed in the NSLP or the SBP upon implementation of the rule in SY 2012-2013.
- The rule did not restrict added sugars in flavored milk.

Offer versus Serve

- The final rule requires the reimbursable lunch selected by a student include a fruit or a vegetable beginning SY 2012-2013.
- In the SBP, this requirement is effective in SY 2014-2015.
- The final rule allows students to take ½ cup of a fruit or a vegetable, rather than the full component, to have a reimbursable meal.

Saturated Fat and Trans Fat

- The rule implements a saturated fat limit of less than 10 percent of all calories, based on an average over the week. This is the same saturated fat restriction currently in place in the NSLP and SBP.

- Trans fat should be 0 grams, based on an average over the week. In SBP, this trans fat specification takes effect in SY 2013-2014.
- The rule does not require schools to meet a total fat restriction.

Calories

- The rule implements a minimum and maximum calorie level for each grade group, to be met on average over the course of the week.
- In the NSLP, the calorie limits for each age/grade group take effect in SY 2012-2013. The limits are as follows:
 - Grades K-5 – 550-650;
 - Grades 6-8 – 600-700; and
 - Grades 9-12 – 750-850.
- In the SBP, calorie limits are to be implemented in SY 2013-2014. The limits are as follows:
 - Grades K-5 – 350-500;
 - Grades 6-8 – 400-550; and
 - Grades 9-12 – 450-600.

Fortification

- The rule does not permit the use of formulated grain-fruit products to meet the grain and fruit components in the SBP, effective SY 2012-2013.
- This rule does not prohibit the use of fortified cereals or cereals with fruit.

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We trust this information is useful. Please note that the final rule and the USDA press release on the final rule are attached. Please let us know if you have any questions, or would like further detail regarding any topics in this memorandum.

Attachments (2)

OFW: jab

Appendix

Sodium Reduction: Timeline & Amount					
Age/Grade Group	Baseline: Current Average Sodium Levels As Offered¹ (mg)	Target 1: Meet by July 1, 2014 (SY 2014-2015) (mg)	Target 2: Meet by July 1, 2017 (SY 2017-2018) (mg)	Final Target:² Meet by July 1, 2022 (SY 2022-2023) (mg)	% Change (Current Levels vs. Final Targets)
School Breakfast Program					
K-5	573 (elementary)	≤ 540 (28.4% of UL)	≤ 485 (25.5% of UL)	≤ 430 (22.6% of UL)	-25%
6-8	629 (middle)	≤ 600 (27.3% of UL)	≤ 535 (24.3% of UL)	≤ 470 (21.4% of UL)	-25%
9-12	686 (high)	≤ 640 (27.8% of UL)	≤ 570 (24.8% of UL)	≤ 500 (21.7% of UL)	-27%
National School Lunch Program					
K-5	1,377 (elementary)	≤ 1,230 (64.8% of UL)	≤ 935 (49.2% of UL)	≤ 640 (33.7% of UL)	-54%
6-8	1,520 (middle)	≤ 1,360 (61.8% of UL)	≤ 1,035 (47.0% of UL)	≤ 710 (32.3% of UL)	-53%
9-12	1,588 (high)	≤ 1,420 (61.7% of UL)	≤ 1,080 (47.0% of UL)	≤ 740 (32.2% of UL)	-53%

¹Current Average Sodium Levels as Offered are from the School Nutrition and Dietary Assessment Study-III. Data were collected in the 2004-05 school year.

²The IOM final targets are based on the Tolerable Upper Intake Limits (ULs) for sodium, established in the Dietary Reference Intakes (DRI) (IOM, 2004). The sodium ULs for school-aged children are 2,300 mg (ages 14-18), 2,200 mg (ages 9-13), and 1,900 mg (ages 4-8). The final sodium targets represent the UL for each age/grade group multiplied by the percentage of nutrients supplied by each meal (approximately 21.5% for breakfast, 32% for lunch), as recommended by IOM. IOM's recommended final sodium targets for the K-5 age/grade group breakfasts and lunches are slightly higher than 21.5% and 32%, respectively, of the UL because this proposed elementary school group spans part of two DRI age groups (ages 4-8 and 9-13 years).