May 10, 2023

Secretary Tom Vilsack
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

Director Tina Namian
School Meals Policy Division
Food and Nutrition Service
P.O. Box 9233
Reston, VA 20195

Re: FNS-2022-0043, Proposed Rule: Child Nutrition Programs – Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans

Submitted online at https://www.regulations.gov

Dear Secretary Vilsack and Director Namian,

On behalf of Friends of the Earth U.S. and our more than 4.5 million members and supporters, we commend the U.S. Department of Agriculture (USDA) Food and Nutrition Service for its efforts to improve school meals and thus support our nation's children both today and – given the vital role food and nutrition plays in our health, wellbeing, and environment – into the future.

I. Introducing Friends of the Earth and the Climate-Friendly School Food Program

Founded in 1969 by David Brower, Friends of the Earth U.S. is a 501(c)(3) non-profit organization with offices in Berkeley, California and Washington, D.C., and staff located across the country. Friends of the Earth is a membership organization consisting of more than 4.5 million members and activists in all 50 states, the District of Columbia, Puerto Rico, Guam, and other U.S. territories. Friends of the Earth is a member of Friends of the Earth-International, which is a network of grassroots groups in 74 countries worldwide. Our mission is to protect our natural environment – including air, water, and land – to create a healthier and more just world. We utilize public education, research, advocacy, legislative and administrative processes, litigation, and open access to government processes and records to achieve our organizational goals.

For more than six years, Friends of the Earth's Climate-Friendly School Food Program has worked to leverage the seven billion school meals served each year to spur a more healthy, just, and sustainable food system from farm to fork. We have successfully advocated for policies and funding to expand plant-forward meal offerings in California and Washington, D.C.; facilitated a national coalition of more than a

dozen non-profit organizations working to expand healthy, climate-friendly K-12 menus; hosted regional forums for school food stakeholders on climate-friendly school food strategies; and co-led a policy program for youth to engage in school food advocacy. We have authored several reports and policy briefs, including:

- Shrinking the Carbon and Water Footprint of School Food (2017) which documents carbon, water, and cost savings at Oakland Unified School District from shifting to more plant-forward menus.
- Scaling Up Healthy, Climate-Friendly School Food (2019) which documents strategies for incorporating plant-based and plant-forward dishes into K-12 schools and features case studies from four pioneering school districts.
- The State of School Lunch in California (2021) which analyzed California lunch menus to find that meat and dairy products dominated K-12 menus, with few plant-based options available in most districts.
- Organic School Food Roadmap (2021) which outlines strategies for increasing organic options in K-12 menus and features seven school district case studies.

Our California Climate-Friendly School Food Program helps school districts make the shift towards nourishing, delicious, plant-forward, and organic menus. We provide technical assistance to support organic procurement and plant-forward menus, marketing materials, student and community engagement, and resources to help school districts succeed. We currently work with 85 school districts in California on customized menu development, partnering directly with nutrition service directors to provide technical assistance for nourishing, climate-friendly menu development shifts. Our technical support reaches 18 of the top 25 largest school districts in California and focuses on recipe development, culinary training, student engagement, and marketing strategies for climate-friendly, plant-based, and organic menu offerings.

In alignment with and in service of our mission, vision, and core values, enclosed are Friends of the Earth's comments on the USDA Food and Nutrition Service (FNS) Proposed Rule: Child Nutrition Programs (CNPs) – Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans (DGA), published in the Federal Register on February 7, 2023 under document number 2023-06666 (the agency number is FNS-2022-0043). These recommendations were developed over the past several years in partnership with dozens of school nutrition staff and directly impacted K-12 students through ongoing discussions, roundtables, and feedback sessions.

II. Aligning with USDA's Mission, Vision, and Core Values

Friends of the Earth is advocating for maintaining several changes in the Proposed Rule – as well as making updates to what USDA is proposing – so that the Final Rule will not only support FNS in its endeavors to best nourish our nation's children but also support USDA's broader mission and vision to spur economic development and preserve our environment as well as align with its core values, including respect and dignity; equity and inclusion; and science leadership.[1] Our proposals are not only evidence-based and equity-centered but also holistic in nature. We aim to nourish children while at the same time

[1] U.S. Department of Agriculture. Strategic Plan Fiscal Years, 2022-2026. March 2022, p.3.

consider child nutrition programs in the context of the broader systems in which they exist and the myriad impacts they have on our children, communities, agricultural producers, and the environment. Thus, our comments are essential for both nourished children and a healthy planet with thriving communities, all bolstered by emphasizing plant-based and plant-forward menus that center respect, dignity, equity, and inclusion.

Our recommendations are in alignment with and service of USDA's mission "[to] serve *all* Americans by providing effective, innovative, *science-based* public policy leadership in agriculture, food and nutrition, natural resource protection and management, rural development, and related issues with a commitment to deliver *equitable* and climate-smart *opportunities that inspire and help America thrive*."[2] [emphasis added] Additionally, our recommendations align with USDA's vision "to provide economic opportunity through innovation…to promote agriculture production that better nourishes Americans…and to preserve our Nation's natural resources through conservation…"[3] Lastly – and of utmost importance – our recommendations align with USDA's core values, including prioritizing equity in everything it does. As the Agency explains, "USDA can only succeed in its mission to help America thrive – and can only live up to President Lincoln's description of it as the 'People's Department' – if it ensures that the Americans who need its services most receive them. Equity is not an add-on or extra."[4] USDA's other core values – along with equity and inclusion – are centered in our recommendations, including: "Respect and Dignity: We treat all people with courtesy and respect, and we value the inherent dignity of every individual."; "Equity and Inclusion: We seek to end discrimination in all forms, wherever it exists, and expand services and opportunities to underserved people and communities across America, starting with our workforce."; and "Science Leadership: We base our decisions and policy on science and data that are reliable, timely, relevant and free from political interference."[5]

At present, there is more USDA can do to inclusively nourish our children; protect our natural resources; and support a fair and sustainable agricultural economy.

III. Achieving USDA's Goals by Facilitating Plant-Based and Plant-Forward Options

To achieve USDA's goals – broadly as an Agency and specifically in updating the CNP meal patterns to align with the DGA – USDA must foster the inclusion of plant-based[6] and plant-forward[7] menu options. Not only do plant-based and plant-forward options support alignment with the DGA, they also meet student and operator demand; advance the Agency's core values of equity and inclusion; and support USDA's climate and conservation goals. Borrowing from the DGA, plant-based meals maximize the ability to "make every bite count"[8] by holistically fostering nourished children, a healthy planet, and thriving communities.

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[2] U.S. Department of Agriculture. Strategic Plan Fiscal Years, 2022-2026. March 2022, p.3.
[3] U.S. Department of Agriculture. About the U.S. Department of Agriculture. https://www.usda.gov/our-agency/about-usda
[4] U.S. Department of Agriculture. Equity at USDA. https://www.usda.gov/equity
[5] U.S. Department of Agriculture. Strategic Plan Fiscal Years, 2022-2026. March 2022, p.3.
[6] We use the term "plant-based" to refer to entrees or meals that contain no animal products; these options could also be called "vegan."
[7] We use the term "plant-forward" to refer to entrees or meals that feature plant-based sources of protein but may still contain some animal products (e.g., a bean and cheese burrito or a taco salad made with beans and chicken).
[8] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020, p. V.

a. Plant-Based Options Align with the Dietary Guidelines for Americans

Leading public health organizations all encourage fiber-rich, plant-forward diets.[9] Expanding plant-based and plant-forward options will foster greater alignment with the DGA, which recommend increasing consumption of beans, peas, and lentils and of nuts and seeds;[10] increasing dietary fiber (which comes from plants);[11] replacing processed meats (e.g., hot dogs, sausages, and bacon) with beans, peas, and lentils to reduce sodium and saturated fat;[12] and diversifying sources of protein.[13] The Final Rule must prioritize regulations that make fiber-rich whole grains, plant proteins, and whole fruits and vegetables more abundant and accessible in school meals.

i. Plant-Based Options Increase Intake of Beans, Peas, Lentils, Nuts and Seeds, and Provide an Alternative to Processed Meat. Increasing the availability of plant-based and plant-forward options will support achievement of the DGA recommendations to increase intake of beans, peas, and lentils – as well as nuts and seeds – both of which are lower for youth than the DGA recommended intakes.[14] In contrast, the DGA notes that "youth typically meet or exceed recommendations for meat, poultry, and eggs."[15] The DGA specifically recommends replacing some processed meat consumption with beans, peas, and lentils to better align with recommended intakes and to support reduced sodium and saturated fat.[16]

ii. Plant-Based Options Increase the Intake of Dietary Fiber. More than 90 percent of children and adolescents consume a fiber-deficient diet, with a majority consuming just half of their needs.[17] This near-universal deficiency is due to a dietary pattern low in minimally-processed plant foods like beans, peas, and lentils; 100-percent whole grains; nuts and seeds; vegetables; and fruits. Although school meals contain relatively more of these fiber-rich foods than do other meals a typical child eats in a day, school meals still do not go far enough in improving children's fiber intake. The most recent peer-reviewed analyses of fiber in school meals have consistently demonstrated that the School Breakfast Program (SBP) and the National School Lunch Program (NSLP) fall short of meeting children's dietary fiber needs by a significant margin.[18,19,20] In fact, school meals may be falling short of fiber adequacy by roughly 30 percent, or 3-5 grams per 1,000 kilocalories,[21] based on the Dietary Reference Intake (DRI) of 14 grams per 1,000

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[9] Friends of the Earth. Public Health Consensus on Eating More Plant-based Foods and Less Meat. https://foe.org/wp-content/uploads/2021/03/Public-Health-Consensus-for-Reduced-Meat-Consumption-kh-final.pdf
[10] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020, p. 30.
[11] Id, p. 101.
[12] Id, p. 34.
[13] Id, p. 33.
[14] Id, p. 86.
[15] Id, p. 76.
[16] Id, p. 34.
[17] U.S. Department of Agriculture Agricultural Research Service. Usual nutrient intakes from food and beverages, by gender and age. What we eat in America, NHANES 2015–2018. 2021. www.ars.usda.gov/nea/bhnrc/fsrg
[18] Cummings PL, Welch SB, Mason M, Burbage L, Kwon S, Kuo T. Nutrient content of school meals before and after implementation of nutrition recommendations in five school districts across two U.S. counties. Preventive Medicine. 2014 Oct;67(1 Suppl):S21-27.
[19] Hopkins LC, Gunther C. A Historical Review of Changes in Nutrition Standards of USDA Child Meal Programs Relative to Research Findings on the Nutritional Adequacy of Program Meals and the Diet and Nutritional Health of Participants: Implications for Future Research and the Summer Food Service Program. Nutrients. 2015 Dec 4;7(12):10145-67.
[20] Adams EL, Raynor HA, Thornton LM, Mazzeo SE, Bean MK. Nutrient Intake During School Lunch in Title I Elementary Schools With Universal Free Meals. Health Educ Behav. 2022 Feb;49(1):118-127.
[21] Bennett M and Biazzo C. Closing the Fiber Gap in School Meals. Balanced. 2022. https://www.balanced.org/_files/ugd/9d0f12_3615bcd02eb946249d4c0b8cde997da5.pdf

kilocalories.[22] USDA's *2021 School Nutrition and Meal Cost Study* found that fiber intake of both NSLP and non-NSLP participants was significantly lower than the DGA recommended intakes.[23]

Dietary fiber is essential for optimal health in childhood and across the lifecycle. A low intake of dietary fiber is associated with many life-threatening and debilitating chronic conditions, including cardiovascular disease,[24] diabetes,[25] certain cancers,[26] and allergic diseases.[27] Poor diet has also been linked to poor mental health.[28] These conditions are manifesting at young ages. By enhancing the school nutrition standards around whole grains, pulses, and other fiber-rich foods, the USDA can help reverse concerning health trends and lessen health disparities.

In light of extensive fiber deficiency and the associated negative health consequences, the DGA explicitly names dietary fiber as a "dietary component of public health concern."[29] The recommended course of action is "to increase the intake of vegetables, fruits, beans, [and] whole grains,"[30] an inevitable and urgently necessary path our country must take. USDA must consider the importance of dietary fiber in the current context of widespread fiber deficiency, both in children's diets and in school meals. Therefore, the Final Rule must prioritize regulations that make fiber-rich whole grains, plant proteins, and whole fruits and vegetables more abundant and accessible in school meals, and USDA must provide technical assistance to operators in expanding fiber-rich options. To support USDA in this effort, many of the items in our comments will help with increasing fiber consumption. These include our recommendations to:

- ➔ 4a. Maintain USDA's proposal to require at least 80 percent of the weekly grains in the school lunch and breakfast menus to be whole grain-rich.
- ➔ 11a. Maintain USDA's proposal to add hummus to the list of foods exempt from the total fat standard in the regulations, which will allow hummus to be sold as a Smart Snack.
- ➔ 15c. Update USDA's proposal to include quinoa and other grains high in protein in the new "protein sources" meal component.
- ➔ 15e. Update USDA's proposal to encourage schools to offer daily plant-based options beyond a nut butter sandwich.

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[22] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition.
[23] U.S. Department of Agriculture Food and Nutrition Service. School Nutrition and Meal Cost Study. Volume 4. Student Participation, Satisfaction, Plate Waste, and Dietary Intakes. April 2019, p. 44. https://fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS-Volume4.pdf
[24] Threapleton DE, Greenwood DC, Evans CEL, Cleghorn CL, Nykjaer C, Woodhead C et al. Dietary fiber intake and risk of cardiovascular disease: systematic review and meta-analysis. BMJ. 2013;347:f6879
[25] Yao B, Fang H, Xu W et al. Dietary fiber intake and risk of type 2 diabetes: a dose–response analysis of prospective studies. Eur J Epidemiol. 2014. 29, 79–88.
[26] Murphy N, Norat T, Ferrari P, Jenab M, Bueno-de-Mesquita B, Skeie G et al. Dietary Fiber Intake and Risks of Cancers of the Colon and Rectum in the European Prospective Investigation into Cancer and Nutrition (EPIC). PLoS ONE. 2012. 7(6):e39361.
[27] Venter C, Meyer, RW, Greenhawt M, Pali-Schöll I, Nwaru B, Roduit C et al. Role of dietary fiber in promoting immune health—An EAACI position paper. Allergy. 2022. 77(11):3185-98.
[28] O'Neil, A., Quirk, S. E., Housden, S., Brennan, S. L., Williams, L. J., Pasco, J. A., Berk, M., & Jacka, F. N. (2014). Relationship Between Diet and Mental Health in Children and Adolescents: A Systematic Review. *American Journal of Public Health*, *104*(10), e31–e42. https://doi.org/10.2105/AJPH.2014.302110
[29] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition, p. 36.
[30] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition, p. 36.

- ➔ 15f. Update USDA's proposal to allow beans, peas, and lentils – as well as tofu and soy products – to qualify as a meat alternate even if they are not visually recognizable, under specified circumstances.
- ➔ 15g. Update USDA's proposal to allow pulse-based pasta to credit as a meat alternate regardless of whether it is served alongside a visually recognizable meat/meat alternate, and allow beans, peas, and lentils to credit as a meat alternate in smoothies.
- ➔ 15h. Update USDA's proposal to clarify that beans, peas, and lentils can credit as both a vegetable and meat alternate on the same day if served in sufficient quantities, even if they are served in the same meal.
- ➔ 15i. Update USDA's proposal to allow a single pulse dish to credit as a vegetable *or* meat alternate on the same day.
- ➔ 17a. Maintain USDA's proposal to allow pulses offered as a meat alternate to count toward the weekly pulse vegetable requirement.

Given the significant impacts of fiber deficiency on public health, Friends of the Earth urges USDA to continue to closely monitor fiber consumption. If future USDA research continues to show low fiber consumption for both NSLP and non-NSLP participants alike, USDA should make further and necessary updates by establishing a weekly fiber standard.

iii. Plant-Based Options Diversify Protein Intake. Increasing availability of plant-based and plant-forward options is important to diversify protein intake. A recent Friends of the Earth analysis of California school lunch menus found that only four percent of entree options were plant-based (and half of those were nut butter and jelly) in contrast to 94 percent of entree options that featured animal-sourced proteins.[31] This finding suggests a misalignment with the DGA "key dietary principle" to "choose a variety of options from each food group."[32]

b. Plant-Based Options Meet Student and Operator Demand

As the K-12 student population grows increasingly racially and culturally diverse as well as environmentally conscious and concerned for animal welfare, the demand for plant-based[33,34] and plant-forward[35,36] meals have grown. Importantly, providing more plant-based and plant-forward options could increase meal participation rates: A 2022 Chartwells poll found that 37 percent of students said they would eat school lunch more often if there were more vegetarian and vegan choices.[37] Unfortunately, most K-12 school menus have not been able to keep up with this demand, due in part to the regulatory

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[31] Hamerschlag, K. and Kraus-Polk, J. Friends of the Earth. The State of School Lunch in California. March 2021, p. 6. https://foe.org/wp-content/uploads/2021/03/SchoolFoodReport_No-Execsummary.pdf
[32] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition, p. 25
[33] Singh, S. *Plant-Based Food Market Size, Trends, Share, and Forecast to 2030*. https://www.marketresearchfuture.com/reports/plant-based-food-market-8578
[34] Feria, L. (2022, September 27). *Gen Z is leading a generational shift in plant-based food purchasing*. Supermarket News. https://www.supermarketnews.com/health-wellness/gen-z-leading-generational-shift-plant-based-food-purchasing
[35] Cobe, P. & 2022. (n.d.). *The rise in plant-forward eating continues post-pandemic*. Restaurant Business. https://restaurantbusinessonline.com/consumer-trends/rise-plant-forward-eating-continues-post-pandemic
[36] Jed, E. (2018, August 12). *Aramark Brings Gen Z Food Trends To Life On College Campuses Nationwide*. https://www.vendingtimes.com/news/aramark-brings-gen-z-food-trends-to-life-on-college-campuses-nationwide/
[37] *8 Veg Out treats from Chartwells K12 | Food Management*. (2022, November 8). https://www.food-management.com/k-12-schools/8-veg-out-treats-chartwells-k12

barriers we discuss in these comments. Facilitating plant-based options throughout the meal patterns via the Final Rule will meet both the needs of students and program operators relying on USDA-supported school meals.

c. Plant-Based Options Advance Equity and Inclusion

Along with students' environmental and animal welfare concerns, there are also a variety of cultural, ethnic, religious, and physiological reasons that make including plant-based options imperative. For example, many religions encourage vegetarianism, and some restrict certain animal products. Students who follow plant-based or vegetarian diets have reported going hungry at school because there was not enough they could eat.[38]

There is also an important racial justice and equity case for ensuring the availability of plant-based options: Black, Indigenous, and other People of Color (BIPOC) are three times as likely to follow a plant-based diet than white people,[39] and a 2020 Gallup poll revealed that 31 percent of BIPOC Americans reported reducing meat consumption in the last year compared to 19 percent of white Americans.[40] According to the National Institutes of Health, 95 percent of Asian Americans, 60-80 percent of African Americans, 80-100 percent of American Indians, and 50-80 percent of Hispanic people are unable to process lactose.[41] Especially because BIPOC are also more likely to be food insecure – and therefore reliant on free and reduced-price school meals – it is imperative that our child nutrition programs accommodate the dietary needs and preferences of BIPOC students.[42] The Final Rule must comprehensively foster plant-based and dairy-free options to better meet the dietary needs of *all* children – the ultimate beneficiaries of child nutrition programs – and to uplift USDA's core values of respect and dignity and advance its values of equity and inclusion.[43]

d. Plant-Forward Menus Support Climate and Conservation Goals

When the National School Lunch Act was passed in 1946, it established the goal of the school meal program to "safeguard the health and well-being of the Nation's children."[44] Today, living up to that intention means leveraging the seven billion school meals each year to help combat the greatest threat facing this and future generations of children: climate change.

Students are bringing their conservation mindsets and climate activism to the cafeteria, and plant-rich diets are a crucial solution to the climate crisis that they face.[45] Reams of scientific studies show that industrial animal agriculture plays a major role in driving climate change and that plant-rich diets are a

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[38] Healthy, Climate-Friendly School Food Campaign. (2022, February 21). *Support the Healthy Future Students & Earth Act—Full Version*. https://www.youtube.com/watch?v=ui1jVKE6DzQ

[39] Gallup. (2019, September 27). *What Percentage of Americans Are Vegetarian?* https://news.gallup.com/poll/267074/percentage-americans-vegetarian.aspx

[40] Gallup. (2020, January 27). *Nearly One in Four in U.S. Have Cut Back on Eating Meat*. https://news.gallup.com/poll/282779/nearly-one-four-cut-back-eating-meat.aspx

[41] National Institutes of Health, Lactose Intolerance: Information for Health Care Providers (2006).

[42] Myers, A. M. C., & Painter, M. A. (2017). Food insecurity in the United States of America: an examination of race/ethnicity and nativity. Food Security, 9(6), 1419–1432. https://doi.org/10.1007/s12571-017-0733-8

[43] USDA Strategic Plan Fiscal Years 2022-2026. https://www.usda.gov/sites/default/files/documents/usda-fy-2022-2026-strategic-plan.pdf

[44] 42 U.S.C. 1751.

[45] Intergovernmental Panel on Climate Change, Climate Change and Land. (Jan. 2020). https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM_Updated-Jan20.pdf; See also, Drawdown, Farming Our Way out of the Climate Crisis (Dec. 2020). https://drawdown.org/sites/default/files/pdfs/DrawdownPrimer_FoodAgLandUse_Dec2020_01c.pdf

highly effective way to reduce our impact on the climate.[46] Plant-rich diets also require less land[47] and fewer water resources.[48] Therefore, facilitating more plant-forward menus is a key strategy to achieve USDA's climate and conservation goals.

IV. Finalizing the Meal Patterns and Ensuring Successful Implementation

Fostering plant-based options and more plant-forward menus in the Final Rule is necessary to ensure successful implementation of the updated meal patterns. Our priorities – some of which maintain and others of which update the Proposed Rule – will advance USDA's priorities and core values by supporting the DGA, ensuring evidence-based nutrition, and protecting our planet.

a. Maintain in the Final Rule

Some of Friends of the Earth's priorities are included in the Proposed Rule, and we express our advanced appreciation for maintaining these in the Final Rule:

Section 2: Added Sugars

- ➔ 2a. Maintain the proposed added sugars product-based limits and weekly dietary limits.

Section 5: Sodium

- ➔ 5b. Strengthen sodium targets.

Section 6: Menu Planning Options for American Indian and Alaska Native Students

- ➔ 6a. Expand the option to serve vegetables to meet the grains component to include the Child and Adult Care Food Program and Summer Food Service Program.
- ➔ 6b. Expand the option to serve vegetables to meet the grains component to include schools that are tribally or Bureau of Indian Education operated, schools primarily serving American Indian or Alaska Native children, and schools in Guam and Hawaii.

Section 7: Traditional Foods

- ➔ 7a. Explicitly state in regulation that traditional foods may be served in reimbursable school meals.
- ➔ 7b. Commit to supporting efforts to incorporate traditional foods into school meals, including by addressing barriers to doing so.

Section 10. Nuts and Seeds

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[46] Id. *See also* Schiermeier, Q. (2019). Eat less meat: UN climate-change report calls for change to human diet. *Nature*, *572*(7769), 291–292. https://doi.org/10.1038/d41586-019-02409-7; *See also* Sun, Z., Scherer, L., Tukker, A., Spawn-Lee, S. A., Bruckner, M., Gibbs, H. K., & Behrens, P. (2022). Dietary change in high-income nations alone can lead to substantial double climate dividend. *Nature Food*, *3*(1), Article 1. https://doi.org/10.1038/s43016-021-00431-5; *See also* United Nations. *Food and Climate Change: Healthy diets for a healthier planet*. United Nations; United Nations. https://www.un.org/en/climatechange/science/climate-issues/food

[47] Poore, J., & Nemecek, T. (2018). Reducing food's environmental impacts through producers and consumers. *Science*, 360(6392), 987-992. *See also* Hayek, M. N., Harwatt, H., Ripple, W. J., & Mueller, N. D. (2020). The carbon opportunity cost of animal-sourced food production on land. Nature Sustainability, 1-4.

[48] Kim, B. F., Santo, R. E., Scatterday, A. P., Fry, J. P., Synk, C. M., Cebron, S. R., Mekonnen, M. M., Hoekstra, A. Y., de Pee, S., Bloem, M. W., Neff, R. A., & Nachman, K. E. (2020). Country-specific dietary shifts to mitigate climate and water crises. *Global Environmental Change*, *62*, 101926. https://doi.org/10.1016/j.gloenvcha.2019.05.010

➔ 10a. Allow nuts and seeds to credit for 100 percent of the meat/meat alternate component in all child nutrition programs and meals.

Section 11. Competitive Foods – Hummus Exemption

➔ 11a. Add hummus to the list of foods exempt from the total fat standard in the regulations, which will allow hummus to be sold as a Smart Snack.

Section 13. Buy American

➔ 13a. Establish a 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year.

Section 14: Geographic Preference

➔ 14a. Allow "locally grown, raised, or caught" to be used as procurement specifications for unprocessed or minimally processed food items.

Section 15: Miscellaneous Changes

➔ 15a. Change the name of the meat/meat alternate component to "protein sources."

➔ 15b. Change the name for the "legumes (beans and peas)" vegetable subgroup to "beans, peas, and lentils."

Section 17. Proposals from Prior USDA Rulemaking

➔ 17a. Allow pulses offered as a meat alternate to count toward the weekly pulse vegetable requirement.

b. Update in the Final Rule

Friends of the Earth's comments also include provisions to strengthen the Final Rule:

Section 2: Added Sugars

➔ 2b. Prevent product reformulations that use artificial sweeteners in place of added sugars.

Section 3: Milk

➔ 3a. Modify the Serve model for middle and elementary schools such that milk is always an optional meal component.

➔ 3b. Clarify that SFAs are authorized and encouraged to provide a non-dairy beverage that meets the USDA standards to any student with a special medical or dietary need whose parent or guardian makes a request.

➔ 3c. Clarify that plant-based diets can qualify as a special medical or dietary need, whether the diet is due to religious, cultural, physiological, philosophical, or other reasons.

➔ 3d. Clarify that lactose intolerance can be considered both a disability and a special medical or dietary need.

➔ 3e. Provide a model parental notice and form for milk substitution requests that SFAs can use on their websites and mail to families.

- ➔ 3f. Allow additional healthcare professionals to write a note to support meal modifications that do not meet the meal pattern requirements.
- ➔ 3g. Amend regulations and policy memoranda for all school meal programs other than the NSLP such that disability-related substitutions must be made available upon request of a parent or legal guardian.
- ➔ 3h. Eliminate access to flavored cow's milk and instead facilitate access to non-dairy substitutes.

Section 4: Whole Grains

- ➔ 4a. Update in the Final Rule: Require at least 80 percent of the weekly grains in the school lunch and breakfast menus to be whole grain-rich.
- ➔ 4b. Update in the Final Rule: Do not provide the option that all grains offered meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains.

Section 5: Sodium

- ➔ 5a. Encourage schools to prioritize reductions in sodium via phasing out processed meats.

Section 6: Menu Planning Options for American Indian and Alaska Native Students

- ➔ 6c. Expand the option to serve vegetables to meet the grains component to include all schools.
- ➔ 6d. Expand the list of allowable vegetables to substitute for grains to include squash, cassava (yuca), and taro, in addition to USDA's proposal to add prairie turnips.
- ➔ 6e. Require vegetables allowed to be substituted for the grains component to be prepared in ways that align with traditional cultural preparations.

Section 7: Traditional Foods

- ➔ 7c. Consider and support additional populations for whom standard school meals are not reflective of their traditions and cultures.

Section 10. Nuts and Seeds

- ➔ 10b. Align the nutritional equivalency FNS has set for nuts and seeds – as well as nut and seed butters – with the DGA.

Section 14: Geographic Preference

- ➔ 14b. Encourage procurement specifications for "products produced in an environmentally sustainable manner" and for "products produced by a certified organic farm or ranch."
- ➔ 14c. Encourage procurement specifications for "foods produced by a farm with employees who, as permitted by law, are represented by a collective bargaining agreement or memorandum of understanding" and "foods produced by a farm participating in a worker justice certification program."
- ➔ 14d. Encourage procurement specifications for "foods produced by an historically underserved, socially disadvantaged, or limited resource farmer or producer."

- ➔ 14e. Encourage procurement specifications for "animal products produced by a farm participating in an independent animal welfare certification program."

Section 15: Miscellaneous Changes

- ➔ 15c. Include quinoa and other grains high in protein in the new "protein sources" meal component.
- ➔ 15d. Phase out processed meats by the 2027-2028 school year.
- ➔ 15e. Encourage schools to offer daily plant-based options beyond a nut butter sandwich.
- ➔ 15f. Allow beans, peas, and lentils – as well as tofu and soy products – to qualify as a meat alternate even if they are not visually recognizable.
- ➔ 15g. Allow pulse-based pasta to credit as a meat alternate regardless of whether it is served alongside a visually recognizable meat/meat alternate, and allow beans, peas, and lentils to credit as a meat alternate in smoothies.
- ➔ 15h. Clarify that beans, peas, and lentils can credit as both a vegetable and meat alternate on the same day if served in sufficient quantities, even if they are served in the same meal.
- ➔ 15i. Allow a single pulse dish to credit as a vegetable *or* meat alternate on the same day.

c. Prioritize Support for Operators across All Changes Made

Finally, across all of the changes made to the meal patterns, we urge USDA to do everything possible to best support the child nutrition program professionals leading implementation of the changes. Doing so would entail USDA providing program operators with comprehensive training and technical assistance as well as streamlining the regulations across the myriad programs wherever possible. In combination, these steps will foster successful implementation of the changes. CNP professionals will be able to invest less of their time in navigating needed menu planning differences across various programs and more time into achieving the new standards, all with support from USDA.

Section 2: Added Sugars

- ➔ **2a. Maintain in the Final Rule: Maintain the proposed added sugars product-based limits and weekly dietary limits.**

Friends of the Earth supports USDA's proposal to limit added sugars in school meals, including the product-based limits and the weekly dietary limits. There is extensive research linking consumption of added sugars to myriad diet-related chronic diseases, including obesity,[49] metabolic diseases including type 2 diabetes and fatty liver disease,[50] cardiovascular disease,[51] and dental decay.[52, 53]

[49] Malik VS, Popkin BM, Bray GA, Després J-P, Hu FB Sugar-sweetened beverages, obesity, type 2 diabetes mellitus, and cardiovascular disease risk. Circulation. 2010. 121:1356–1364.
[50] Neuenschwander M, Ballon A, Weber KS, Norat T, Aune D, Schwingshackl L, Schlesinger S. Role of diet in type 2 diabetes incidence: umbrella review of meta-analyses of prospective observational studies. BMJ. 2019. 366:l2368.
[51] Yang Q, Zhang Z, Gregg EW, Flanders WD, Merritt R, Hu FB. Added sugar intake and cardiovascular diseases mortality among US adults. JAMA Intern Med. 2014. 174(4):516-24.
[52] Chi DL, Scott JM. Added Sugar and Dental Caries in Children: A Scientific Update and Future Steps. Dent Clin N Am. 2019. 63:17-33.
[53] Bleich S, Vercammen K. The negative impact of sugar-sweetened beverages on children's health: an update of the literature. BMC Obes 2018; 5:6.

Since 2015, the DGA have recommended limiting added sugar to less than 10 percent of total daily caloric intake, yet children and adults of all ages exceed this daily limit. Added sugars account on average for almost 270 calories – or more than 13 percent of total calories – per day in the U.S. population.[54] Nearly 70 percent of added sugars in the U.S. diet comes from five food categories: sweetened beverages (24%), desserts and sweet snacks (19%), pre-sweetened coffee and tea drinks (11%), candy and sugars (9%), and breakfast cereals and bars (7%).[55] Among younger children ages 2-5 years and 6-11 years, the leading sources of added sugars are sweetened beverages, sweet bakery products, candy, other desserts, and ready-to-eat cereals.[56] Flavored milk is the sixth leading source of added sugars among both age groups. Because so many children consume flavored milk at school – and because it is offered so frequently – in the aggregate it is the largest source of added sugars in school meal programs.

Two recent studies using data from The School Nutrition and Meal Cost Study (SNMCS) – a nationally representative study of the school meal environment – assessed the availability and consumption of added sugars during the school day.[57, 58, 59, 60, 61] These studies found that 92 percent of school breakfasts contained 10 percent or more of calories from added sugars, as did 69 percent of lunches. Additionally, both studies found that, in the aggregate, the main source of added sugars in both school breakfasts and school lunches was flavored fat-free milk. Flavored skim milk contributed 29 percent of the added sugars in school breakfasts and almost half (47%) of the added sugars in school lunches. Fox and colleagues found that, over 24 hours, 63 percent of children exceeded the DGA recommended limit for added sugars. These findings demonstrate the prevalence of added sugars in the school meal environment and in children's diets, and thus support the need for establishing an added sugar standard for reimbursable school meals in alignment with the most recent DGA recommendations.

Friends of the Earth applauds USDA's proposed added sugar limits, which will reduce the amount of added sugar made available in the school lunch and breakfast programs. Specifically, Friends of the Earth supports both the product-based limits and weekly dietary limits as written.

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[54] Dietary Guidelines Advisory Committee. 2020. Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC. https://www.dietaryguidelines.gov/sites/default/files/2020-07/ScientificReport_of_the_2020DietaryGuidelinesAdvisoryCommittee_first-print.pdf

[55] Reference: Dietary Guidelines Advisory Committee. 2020. Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC. https://www.dietaryguidelines.gov/sites/default/files/2020-07/ScientificReport_of_the_2020DietaryGuidelinesAdvisoryCommittee_first-print.pdf

[56] Added Sugars in American Children's Diet: What We Eat in America, NHANES 2015-2016. Food Surveys Research Group Dietary Data Brief No. 26. December 2019. https://www.ars.usda.gov/ARSUserFiles/80400530/pdf/DBrief/26_Sources%20of%20Added%20Sugars%20in%20Children%27s%20Diet_1516.pdf

[57] Added Sugars in School Meals and Competitive Foods: A Report to Congress. U.S. Department of Agriculture, Food and Nutrition Service. Alexandria, VA; 2022.

[58] Fox MK, Gearan EC, Schwartz C. Added Sugars in School Meals and the Diets of School-Age Children. Nutrients. 2021;13(2). Epub 20210130. doi: 10.3390/nu13020471.

[59] Debras C, Chazelas E, Srour B, Druesne-Pecollo N, Esseddik Y, Szabo de Edelenyi F, et al. (2022) Artificial sweeteners and cancer risk: Results from the NutriNet-Santé population-based cohort study. PLoS Med 19(3): e1003950. https://doi.org/10.1371/journal.pmed.1003950

[60] Shum B and Georgia S (2021) The Effects of Non-Nutritive Sweetener Consumption in the Pediatric Populations: What We Know, What We Don't, and What We Need to Learn. Front. Endocrinol. 12:625415. doi: 10.3389/fendo.2021.625415

[61] Witkowski, M., Nemet, I., Alamri, H. et al. The artificial sweetener erythritol and cardiovascular event risk. Nat Med (2023). https://doi.org/10.1038/s41591-023-02223-9

➔ **2b. Update in the Final Rule: Prevent product reformulations that use artificial sweeteners in place of added sugars.**

The use of artificial sweeteners remains controversial and little research has been done on young children, however, there are numerous studies linking artificial sweeteners (also known as non-nutritive sweeteners) to a variety of health risks.[62] [63]Therefore, although we recognize that the Food and Drug Administration (FDA) has oversight of the use of artificial sweeteners, Friends of the Earth strongly recommends that USDA include language in the rule that would prevent product reformulations that use artificial sweeteners in place of added sugars. We make this recommendation while knowing that according to a 2021 analysis by the Center for Science in the Public Interest (CSPI), most products from major K-12 companies at the time of analysis did not contain four artificial sweeteners of concern: sucralose, saccharine, aspartame, or acesulfame potassium.[64] Dietary intervention studies on the health effects of the many different low and no calorie sweeteners are needed, and in particular, neutral independent studies on child health risks funded by government, rather than industry.[65]

Section 3: Milk

Friends of the Earth commends USDA for seeking to improve children's access to non-dairy milk substitutes, given, as the proposed rule affirms, "the disproportionate rates of lactose intolerance among communities of color." We understand that its statutory authority limits what the Department can change, however, there are a significant number of modifications that can be made within its current authority that would improve equity in child nutrition programs. To assure that children who cannot or choose not to consume cow's milk still receive the same value as those who can consume cow's milk, Friends of the Earth proposes the following:

➔ **3a. Update in Final Rule: Modify the Serve model for middle and elementary schools such that milk is always an optional meal component.**

USDA regulations require the default school lunch to consist of five components: meat/meat alternates, fruits, vegetables, grains, and fluid milk.[66] The NSLP statute introduces some flexibility, however, instituting a policy known as "offer versus serve" under which "[s]tudents in senior high schools…shall not be required to accept offered foods which they do not intend to consume."[67] By statute, schools below that level may participate in offer versus serve during lunch if their school food authority (SFA) allows them to do so.[68]

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[62] Ruiz-Ojeda FJ, Plaza-Díaz J, Sáez-Lara MJ, Gil A. Effects of Sweeteners on the Gut Microbiota: A Review of Experimental Studies and Clinical Trials. Adv Nutr. 2019 Jan 1;10(suppl_1):S31-S48. doi: 10.1093/advances/nmy037. Erratum in: Adv Nutr. 2020 Mar 1;11(2):468. PMID: 30721958; PMCID: PMC6363527

[63] Debras C, Chazelas E, Sellem L, Porcher R, Druesne-Pecollo N, Esseddik Y et al. Artificial sweeteners and risk of cardiovascular diseases: results from the prospective NutriNet-Santé cohort BMJ 2022; 378 :e071204 doi:10.1136/bmj-2022-071204

[64] Center for Science in the Public Interest. *2021 School Meals Corporate Report Card.* 2021.

[65] Espinosa A, Mendoza K, Laviada-Molina H, Rangel-Méndez JA, Molina-Segui F, Sun Q, Tobias DK, Willett WC, Mattei J. Effects of non-nutritive sweeteners on the BMI of children and adolescents: a systematic review and meta-analysis of randomized controlled trials and prospective cohort studies. Lancet Glob Health. 2023 Mar;11 Suppl 1:S8. doi: 10.1016/S2214-109X(23)00093-1. PMID: 36866485.

[66] 7 C.F.R. § 210.10(c)(2).

[67] 42 U.S.C. § 1758(a)(3).

[68] *Id.*; 7 C.F.R. § 210.10(e).

Child nutrition programs implement offer versus serve as follows:

> *National School Lunch Program*: USDA regulations state that "[u]nder offer versus serve, students must be allowed to decline two components at lunch, except that the students must select at least 1/2 cup of either the fruit or vegetable component."[69] By statute, senior high schools must participate in offer versus serve at lunch, but schools below that level may participate only if their SFA allows them to do so.[70]
>
> *School Breakfast Program*: USDA regulations require the default school breakfast to include at least these three components: fruits, grains, and fluid milk.[71] The regulations further state that "[t]o exercise the offer versus serve option at breakfast, a [SFA] or school must offer a minimum of four food items daily as part of the required components."[72] Then "students are allowed to decline one of the four food items, provided that students select at least 1/2 cup of the fruit component for a reimbursable meal. If only three food items are offered at breakfast, [SFAs] or schools may not exercise the offer versus serve option."[73] Schools may participate in offer versus serve if their SFA allows them to do so.[74]
>
> *Summer Food Service Program*: USDA regulations allow, but do not require, operators that are SFAs to implement the offer versus serve standards available under NSLP.[75]
>
> *Daycare Institutions*: USDA regulations allow a limited offer versus serve option under which an "at-risk afterschool program" may, at its discretion, allow children to decline "[t]wo of the five food components required at supper (fluid milk, vegetables, fruit, grain, and meat/meat alternate)."[76] Relatedly, USDA regulations allow parents and guardians of children in daycare to provide their own substitute for fluid milk if the institution approves of the substitute and all other statutory and regulatory requirements are met.[77]

As explained above, participation in offer versus serve is mandatory for senior high schools participating in NSLP and at the discretion of operators for other age groups and in other CNPs. Because meals served under offer versus serve are reimbursable,[78] schools have no financial incentive to refuse participation in offer versus serve. Nevertheless, participation is far from universal. For the 2004-2005 school year, 71 percent of elementary schools and 90 percent of middle schools used "offer versus serve" during lunch.[79] For the 2009-2010 school year, those percentages dropped to 69 percent and 77 percent respectively.[80]

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[69] 7 C.F.R. § 210.10(e).
[70] 42 U.S.C. § 1758(a)(3); 7 C.F.R. § 210.10(e).
[71] 7 C.F.R. § 220.8(c), (e).
[72] 7 C.F.R. § 220.8(e).
[73] *Id.*
[74] *Id.*
[75] 7 C.F.R. § 225.16(f)(1)(ii) (citing 7 C.F.R. § 210.10).
[76] 7 C.F.R. § 226.20(o)(1)(ii).
[77] 7 C.F.R. § 226.20(g)(1)(ii), (2)(ii).
[78] *See, e.g.*, 7 C.F.R. § 225.16(f)(1)(ii); USDA Memo SP 07-2010 at Attach. p. 3 ("Under OvS, a meal without fluid milk can be reimbursable.").
[79] USDA Food & Nutrition Serv., School Nutrition Dietary Assessment Study - III 28, 31 (2007). https://www.fns.usda.gov/school-nutrition-dietary-assessment-study-iii
[80] USDA Food & Nutrition Serv., School Nutrition Dietary Assessment Study-IV xxxiv (2012). https://www.fns.usda.gov/school-nutrition-dietary-assessment-study-iv

In the Final Rule, USDA should modify the Serve model for middle and elementary schools such that students are required to take all four food components of the meal, but milk is always an optional component. This will allow students who cannot digest milk or choose not to consume it for a philosophical, religious, or other reason to receive a reimbursable meal. It will also address widespread milk waste, which is the greatest source of school food waste by volume,[81] and help elementary and middle school students with philosophical or religious objections to cow's milk live in alignment with their values. Additionally, this would address the operational challenges that deter many elementary schools from using offer versus serve because "take all the food options offered and choose whether or not you want milk" is much simpler to understand and implement than "choose at least three of these five items and make sure at least one is a fruit or a vegetable."

The appeal of the Serve model for some elementary schools is that they can pre-load trays, either at a central facility or at individual facilities, however, it is less common for schools to pre-load trays with milk. Schools can preserve the convenience of pre-loading trays with the four food options, have students take a tray, and then decide whether to put milk on it or not. This would reduce milk waste and would not force students with philosophical, religious, or non-disability medical reasons for not consuming cow's milk to take it.

- ➔ **3b. Update in Final Rule: Clarify that SFAs are authorized and encouraged to provide a non-dairy beverage that meets the USDA standards to any student with a special medical or dietary need whose parent or guardian makes a request.**

The NSLP statute allows for discretionary substitutions in the case of a special medical or dietary need that can be documented by a "written statement of a medical authority or by a student's parent or legal guardian that identifies the medical or other special dietary need that restricts the student's diet."[82] Many SFAs that do allow for discretionary substitutions will only provide one based on a note from a medical authority. We are aware of several cases where SFAs believe the law requires them to have a note from a medical authority in order to provide a substitute. In these cases, SFAs are likely conflating non-disability substitutions with disability substitutions, which, by statute, *do* require a note from a physician.[83]

For example, D.C. Public Schools (DCPS) previously required a note from a medical authority for students to get a non-dairy substitute and were not convinced federal law did not require this. Ultimately, this required advocates to pass a law that prohibits schools from requiring a medical note for non-disability fluid milk substitutions.[84]

While USDA's proposal to reorganize the regulatory text related to fluid milk substitutes for non-disability reasons – by moving the text explaining the fluid milk substitute requirements from paragraph (m) of 7 C.F.R. § 210.10 to paragraph (d) – is a start, that change will be insufficient to alter SFAs' widely held belief that a note from a medical authority is required. USDA should clarify in the Final Rule and accompanying guidance memoranda to SFAs that SFAs are authorized and encouraged to provide a non-dairy beverage that meets the USDA regulations to any student with a special medical or dietary need

[81] U.S. Department of Agriculture. School Nutrition and Meal Cost Study. 2019. https://www.fns.usda.gov/school-nutrition-and-meal-cost-study
[82] 42 U.S.C. § 1758(a)(2)(B)(i)
[83] 42 U.S.C. § 1758(a)(2)(A)(iii)
[84] D.C. Law 22-240. Healthy Students Amendment Act of 2018. https://code.dccouncil.gov/us/dc/council/laws/22-240

whose parent or guardian makes a request. The SFA guidance should include examples of special medical or dietary needs that would fall under this authorization, including lactose intolerance, allergies, and/or following a diet that excludes animal products (e.g., a vegan diet) for any reason.

Friends of the Earth recommends the following updates to the 2022 guidance[85] (additions are underlined):

> *Question 3*: May schools modify Program meals for children whose disabilities restrict their diet?
>
> …Schools must provide a fluid milk substitute to any student with a disability that restricts their diet. FNS considers lactose intolerance a disability for which a fluid milk substitute is required. For students without a disability, schools have discretion to provide fluid milk substitutions with a note from a State licensed health care professional or a note from the child's parent or guardian because of a medical or special dietary need other than a disability (7 CFR 210.10(m)(2)(ii)(B)) and are encouraged to provide non-disability substitutions. See Q67 for additional information…

➔ **3c. Update in the Final Rule: Clarify that plant-based diets can qualify as a special medical or dietary need, whether the diet is due to religious, cultural, physiological, philosophical, or other reasons.**

Some SFAs will provide non-disability milk substitutions only for religious reasons. There are a wide range of reasons other than religion – including cultural, physiological, and philosophical reasons – that fall under the broad umbrella of special medical or dietary need. USDA should encourage SFAs to provide milk substitutes for all special or medical dietary needs, and USDA should provide more clarity to SFAs by listing out examples of special medical or dietary needs including allergies or following a plant-based diet for any reason, whether the diet is due to religious, cultural, philosophical or other reasons.

Here is how we recommend USDA update the 2022 guidance to reflect these changes (additions are underlined, deletions are ~~struck through~~):

> *67. May schools offer non-dairy milk substitutes for non-disability reasons?*
>
> Yes, schools may and are encouraged to provide milk substitutions for medical or special dietary needs that are not related to a disability. ~~non-disability reasons~~. ~~Non-disability reasons~~ Medical or special dietary needs may include but are not limited to food allergies; religious, cultural, or ethical reasons; and lactose intolerance, which is also considered a disability (see Q3 for more). In a non-disability situation, to provide a non-dairy milk substitution, the following requirements must be met…

[85] USDA, FNS Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022 (March 2, 2022), 41. Available at https://fns-prod.azureedge.us/sites/default/files/resource-files/SP05-2022os.pdf

➔ **3d. Update in the Final Rule: Clarify that lactose intolerance can be considered both a disability and a special medical or dietary need.**

FNS's recent guidance has rightly said that lactose intolerance is considered a disability for the purposes of mandatory disability-related substitutions.[86] FNS should also make clear that a parent or guardian's request on this basis is sufficient to request a discretionary substitution. As discussed in the previous paragraph, we have observed widespread confusion about the source of notes for discretionary substitutions (e.g., some SFAs incorrectly believe they are only authorized to make discretionary substitutions based on a note from a doctor). In the Proposed Rule, USDA acknowledges "the specific nutrition and paperwork requirements and cost burden associated with fluid milk substitutes" as well as the time and resource barriers families must overcome to obtain a note from a medical authority as statutorily required to receive a disability-related substitution. If a parent or guardian cannot overcome those barriers, FNS should, at the very least, lower the hurdles to receiving a discretionary substitution for lactose intolerance by clarifying that a parent or guardian note will suffice.

➔ **3e. Update in Final Rule: Provide a model parental notice and model form for milk substitution requests that SFAs can use on their websites and mail to families.**

In Washington, D.C., DCPS reduced confusion by having an easy-to-understand form for parents to request a non-dairy milk option.[87] FNS should provide SFAs with a model form for parents to use to request milk substitutions. FNS could also encourage schools to use the same form to allow parents to request vegan or other types of restricted diet meals, encouraging SFAs to accommodate these dietary preferences. FNS should encourage SFAs to disseminate information on milk substitutions along with other information the SFA sends directly to families.

➔ **3f. Update in Final Rule: Allow additional healthcare professionals to write a note to support meal modifications that do not meet the meal pattern requirements.**

Clarifying USDA's guidance to more directly allow additional healthcare professionals to write notes supporting disability-related substitutions will lower the financial and logistical barriers families face to obtain disability-related substitutes to fluid milk. Licensed dietitians, nutritionists, nurse practitioners, and nurses are capable of identifying reasonable meal modifications for individuals with disabilities.

USDA guidance[88] and USDA's daycare institution regulations[89] broaden the "licensed physician" category, stating that the written statement must come from a licensed physician or licensed healthcare professional who is authorized by State law to write medical prescriptions. One USDA guidance document explains that the term physician "includes osteopathic physicians or doctors of osteopathic medicine. These are fully trained physicians who are licensed by the State to prescribe medication or to

[86] Modifications to Accommodate Disabilities in the School Meal Programs, p. 5. https://fns-prod.azureedge.us/sites/default/files/cn/SP59-2016os.pdf

[87] Milk Substitution and Philosophical Dietary Accommodations Form. https://enrolldcps.dc.gov/sites/dcpsenrollment/files/page_content/attachments/FNS-Milk-Substitution--Philosophical-Dietary-Accommodations-Form-2021-2022.pdf

[88] USDA Memo SP 59-2016 at 4–5; USDA Memo CACFP 14-2017, p. 3-4.

[89] 7 C.F.R. § 226.20(g)(1)(i).

perform surgery."[90] Another USDA guidance document takes a broader view, stating: "The medical statement must include the signature of an individual who is authorized to write medical prescriptions under State law. This may include a doctor, a nurse practitioner, or a physician's assistant."[91] Other USDA guidance confirms that a nurse practitioner who is authorized to write medical prescriptions may meet the "licensed physician" standard.[92] In defining "State licensed healthcare professional," USDA should include those additional professions and characterize "authorized to write medical prescriptions under State law" as a qualification but not a requirement.

- ➔ **3g. Update in Final Rule: Amend regulations and policy memoranda for all school meal programs other than the NSLP such that disability-related substitutions must be made available upon request of a parent or legal guardian.**

Although a note from a healthcare professional is mandated by statute in the context of disability modifications in NSLP,[93] there is no analogous statutory mandate for the Child and Adult Care Food Program (CACFP), School Breakfast Program, Special Milk Program, and Summer Food Service Program (SFSP). USDA has imposed such a mandate in these programs by regulation or in guidance documents, thereby unnecessarily increasing the burdens imposed on BIPOC and under resourced populations. FNS should bring its regulations and guidance documents in line with the less stringent statutory requirements for these programs.

- ➔ **3h. Update in Final Rule: Eliminate access to flavored cow's milk and instead facilitate access to non-dairy substitutes.**

The Proposed Rule suggests two alternatives for flavored milk: one that would restrict flavored milk at breakfast and lunch to high school students, and another that would maintain the status quo of allowing all schools to offer flavored milk, subject to the proposed added sugar limits. The Proposed Rule also requests public input on flavored milk for children in grades 6-8.

Instead of focusing on flavored dairy milk, the Final Rule should facilitate access to non-dairy beverages as suggested above. Whether plain or flavored, high-fat or low-fat, dairy milk can cause digestive symptoms for those unable to digest lactose. Expanding flavored milk will not advance the Proposed Rule's goal to address "the disproportionate rates of lactose intolerance among communities of [C]olor."

Additionally, while the dairy industry touts milk as an essential source of calcium and potassium, these nutrients can be gained from other foods that do not come with the trade-off of high sugar content and saturated fat in flavored milk. For example, rich sources of calcium include kale, broccoli, tofu, nuts, beans, and fortified soymilk.[94] Potassium is similarly available in a wide range of plant foods.[95]

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[90] Food & Nutrition Serv., USDA, School Meals FAQs (2017). https://www.fns.usda.gov/school-meals/faqs
[91] USDA Memo SP 40-2017, p. 15.
[92] *See* USDA Memo SP 59-2016 at 6; USDA Memo CACFP 14-201, p. 3-4, 6.
[93] 42 U.S.C. § 1758(a)(2)(A)(iii).
[94] Dietary Guidelines for Americans. "Food Sources of Calcium." https://www.dietaryguidelines.gov/food-sources-calcium
[95] Dietary Guidelines for Americans. "Food Sources of Potassium." https://www.dietaryguidelines.gov/food-sources-potassium

Friends of the Earth urges USDA to eliminate access to flavored cow's milk and instead facilitate access to non-dairy substitutes.

Section 4: Whole Grains

- ➔ **4a. Update in the Final Rule: Require at least 80 percent of the weekly grains in the school lunch and breakfast menus to be whole grain-rich.**

Friends of the Earth supports the proposed requirement that at least 80 percent of the weekly grains in the school lunch and breakfast menus be whole grain-rich.[96] This is a marked improvement on the rolled-back standard that preceded it (that 50 percent of grains be whole-grain rich).

- ➔ **4b. Update in the Final Rule: Do not provide the option that all grains offered meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains.**

We do not, however, support the alternative option proposed by USDA, in which all grains offered must meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains. It is imperative that the Final Rule streamline and simplify wherever possible, for the best interest of operators, children, and vendors alike and to maximize the success of the programs. Should school be unexpectedly cancelled, the four-day-per-week option would become unnecessarily complicated to manage.

Section 5: Sodium

- ➔ **5a. Update in the Final Rule: Encourage schools to prioritize reductions in sodium via phasing out processed meats.**

USDA requested feedback from stakeholders on specific products for which USDA should develop best practice sodium limits. Friends of the Earth supports this approach and recommends that USDA focus on processed meats because of the myriad reasons we discuss in detail in Section 15(d). Furthermore, phasing out processed meats is not only a key strategy for sodium reduction but also has co-benefits for reducing saturated fats, lowering cancer risk, and reducing greenhouse gas emissions.

- ➔ **5b. Maintain in the Final Rule: Strengthen sodium targets.**

Friends of the Earth applauds USDA's commitment to reducing sodium in school meals and supports the sodium reduction schedule and targets in the Proposed Rule. The proposed reductions are a good next step and balance the need to lower sodium intake in children with the ease of making these changes for school food operators.

[96] FNS defines "whole grain-rich as "foods that contain 100-percent whole grain or contain a blend of whole-grain meal and/or flour and enriched meal and/or flour of which at least 50-percent is whole grain." 7 CFR Parts 210 and 220

The DGA recommends that children 4-8 years limit sodium intake to <1,500 mg a day, <1,800 mg for children 9-13, and <2,300 mg for children 14-18. These limits are based on the 2019 National Academies of Sciences, Engineering, and Medicine (NASEM) Dietary Reference Intake report for sodium, which found that exceeding these limits – known as Chronic Disease Risk Reduction (CDRR) Intakes – "increase the risk of chronic disease in the population."[97] Unfortunately, nine out of 10 children consume sodium at levels far above the recommended limits. According to the DGA, children 4-8 years consume, on average, between 2,525-2,785 mg of sodium per day.[98] Those numbers increase to 3,030-3,451 mg for children 9-13 years and 2,875-3,888 mg for children 14-18 years – all substantially higher than the CDRR amount.[99] In a 2014 nationally representative poll conducted by The Pew Charitable Trusts, the Robert Wood Johnson Foundation, and American Heart Association found that 75 percent of parents think salt should be limited in [school] meals.[100]

Exemplified by significant progress that has already been made, SFAs can meet Target 2 levels and – over time – meet sodium limits that fully align with the DGA. USDA's 2019 School Nutrition and Meal Cost Study (SNMCS)[101] found that in SY 2014-15, the average school lunch was already well below the required Target 1, while the average school breakfast was meeting Targets 1 and 2 and was very close to meeting Target 3.[102] A more recent 2023 study found that, even during the pandemic, sodium decreased in breakfast and lunch between 2019 and 2022, and that the vast majority of school menus were compliant with Target 1 and Interim Target 1A and were close to or already meeting Target 2.[103] SFAs that reached Target 2 have *already* lowered sodium to levels at or lower than the first sodium reduction limit proposed for 2025. The Center for the Science in the Public Interest's 2021 School Meals Corporate Report Card also found that products from all major food manufacturers in the K-12 market already met or were very close to meeting Target 2 at lunch.[104]

USDA can help SFAs build on this progress and meet stronger sodium standards. We strongly support USDA's plan to provide technical assistance, share innovative ideas and best practices, and provide grants to small or rural SFAs. The Healthy Meals Incentive Initiative, along with kitchen equipment grants, Team Nutrition, and the Institute of Child Nutrition are valuable resources for SFAs. We encourage USDA to also focus on providing targeted technical assistance that delivers more intensive and personalized training for those programs that may still have difficulties lowering sodium.

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[97] National Academies of Sciences, Engineering, and Medicine 2019. *Dietary Reference Intakes for Sodium and Potassium*. Washington, DC: The National Academies Press. https://doi.org/10.17226/25353.
[98] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020-2025.* 9th Edition. December 2020. Data source: U.S. Department of Agriculture and U.S. Department of Health and Human Services. *What We Eat in America, NHANES 2015-2016*. Beltsville, MD: USDA 2016.
[99] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020-2025.* 9th Edition. December 2020. Data source: U.S. Department of Agriculture and U.S. Department of Health and Human Services. *What We Eat in America, NHANES 2015-2016*. Beltsville, MD: USDA 2016.
[100] Pew Charitable Trusts. Parents Support Healthier School Food Policies by 3-to-1 Margin. September 2014. Accessed March 2023. Available at: https://www.pewtrusts.org/en/about/news-room/press-releases-and-statements/2014/09/08/parents-support-healthier-school-food-policies-by-3to1-margin
[101] U.S. Department of Agriculture. *School Nutrition and Meal Cost Study*. 2019. https://www.fns.usda.gov/school-nutrition-and-meal-cost-study
[102] U.S. Department of Agriculture. *School Nutrition and Meal Cost Study*. 2019. https://www.fns.usda.gov/school-nutrition-and-meal-cost-study
[103] Chapman LE, Richardson S, Harb AA, Fear E, Daly TP, Olarte DA, Hawley M, Zukowski E, Schwartz C, Maroney M, Cohen JFW. Nutrient Content and Compliance with Sodium Standards in Elementary School Meals in the United States Pre- and Post-COVID-19. *Nutrients*. 2022;14(24):5386.
[104] Center for Science in the Public Interest. *2021 School Meals Corporate Report Card*. November 2021.https://www.cspinet.org/resource/school-meals-corporate-report-card-2021.

Section 6: Menu Planning Options for American Indian and Alaska Native Students

Friends of the Earth appreciates that the Proposed Rule includes an explicit acknowledgment from USDA that "for decades, the [U.S.] government actively sought to eliminate traditional American Indian and Alaska Native ways of life [which] separated indigenous children from their families and heritage, and disrupted access to traditional foods, altering indigenous children's relationship to food."[105] The erasure, oppression, and exclusion of traditional foodways is but one aspect of the myriad racist policies and practices on which our nation's food system was built and persists.

Both historically and still today, BIPOC populations are harmed by our food and farm system's injustices. From a history of stolen land from Native peoples and enslaved African peoples, colonization, detribalization, and destruction of traditional foods – to present-day unsafe working conditions on farms and in slaughterhouses; inequitable access to land, capital, and other resources; and economic disparities in food and farm worker pay (majority BIPOC professions) – USDA regulations contribute to perpetuating this system, and with profound impacts.

BIPOC represent a disproportionate percentage of frontline, low-wage food chain workers that prop up a system that intentionally, systematically suppresses power and causes harm.[106] There are massive disparities in rates of chronic diet-related diseases for BIPOC compared to white people, including for youth.[107]

Current regulations encourage schools to "consider ethnic and religious preferences when planning and preparing meals."[108] To put this into practice, proposed regulations allow for specific instances in which vegetables are allowed to be substituted for the grains component. Friends of the Earth appreciates that the Proposed Rule expands on these allowances, however, additional changes must be made to the Final Rule to best support the breadth of communities, cultures, and preferences that exist in the U.S. *All* children – across all origins, cultures, ethnicities, ages, places, ethnicities, and seasons – must be supported in alignment with USDA's core values to uplift both respect and dignity and to advance equity and inclusion – through child nutrition programs that align with their needs. USDA should not exclude from the Final Rule children attending schools that are not tribally or Bureau of Indian Education operated, nor children from an array of diverse cultures that are not the "majority" ethnicity in their schools across the U.S.

Friends of the Earth is concerned that USDA's proposal of "finalizing a process by which these schools could request, on a case-by-case basis, menu planning options for USDA approval, provided the requests reasonably align with meal pattern requirements" would put an undue burden on schools. The Final Rule must comprehensively address the imperative of inclusive, equitable menu planning options while not placing undue burden on already unjustly burdened and harmed BIPOC and island communities.

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[105] National Museum of the American Indian, *Struggling with Cultural Repression, Chapter 3: Boarding Schools.* Available at: *https://americanindian.si.edu/nk360/code-talkers/boarding-schools/*

[106] HEAL Food Alliance. *Food, Race and Labor: A Brief Explainer*. https://healfoodalliance.org/a-brief-explainer-on-food-and-labor/

[107] Centers for Disease Control and Prevention. (2019). *Prevalence of Childhood Obesity in the United States, Childhood Obesity Facts*. CDC. https://www.cdc.gov/obesity/childhood/index.html

[108] 7 CFR 210.10(m)(3)

What follows is a list of appropriate allowances to maintain or update in the Final Rule. Additionally, Friends of the Earth encourages USDA to incorporate into the Final Rule comments from organizations and individuals representing our children's diverse cultures and communities regarding how CNPs can better meet all children's needs.

- **6a. Maintain in Final Rule: Expand the option to serve vegetables to meet the grains component to include the Child and Adult Care Food Program and Summer Food Service Program.**

Friends of the Earth appreciates that the Proposed Rule includes an expansion of the current regulation allowing substitutions of vegetables to meet the grains component – applicable at present only for school lunches and breakfasts[109] – to include CACFP and SFSP. Children of all ages, and across all seasons, are due culturally appropriate and inclusive menu items.

- **6b. Maintain in Final Rule: Expand the option to serve vegetables to meet the grains component to include schools that are tribally or Bureau of Indian Education operated, schools primarily serving American Indian or Alaska Native children, and schools in Guam and Hawaii.**

Friends of the Earth is grateful that the Proposed Rule includes an expansion of the current regulation allowing substitutions of vegetables to meet the grains component – applicable at present only to schools in American Samoa, Puerto Rico, and the U.S. Virgin Islands – to include schools that are tribally or Bureau of Indian Education operated, schools primarily serving American Indian or Alaska Native children, and schools in Guam and Hawaii. As USDA notes, this "option is intended to accommodate cultural food preferences and to address product availability and cost concerns in these areas."

- **6c. Update in Final Rule: Expand the option to serve vegetables to meet the grains component to include all schools.**

All schools should be able to serve vegetables to meet the grain component in order to benefit the American Indian and Alaskan Native population since 90 percent of students within these ethnic groups attend public schools that are not tribally operated or majority Native American.[110] Additionally, other food cultures, including some African American, Asian American, and Latin American food cultures, also use starchy vegetables as grains. Expanding the option only to schools located in Guam and Hawaii does not align with where these populations currently live, nor does it inclusively support our nation's many cultures and traditional food ways. For example, there are 5.8 million Puerto Ricans living in the mainland U.S., compared to 3 million living in the territory itself.[111] The Final Rule should expand the option to allow starchy vegetables as grains in all schools to ensure equity across American Indian and Alaskan Native populations in addition to all other populations and cultures that use starchy vegetables as grains.

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[109] 7 CFR 225.16(f)(3) and 226.20(f)
[110] *Status and Trends in the Education of American Indians and Alaska Natives: 2008* (NCES 2008-084). Washington, DC: Government Printing Office.
[111] U.S. Census Bureau. (2018) Retrieved from https://data.census.gov/table?q=B03001:+HISPANIC+OR+LATINO+ORIGIN+BY+SPECIFIC+ORIGIN

➔ **6d. Update in Final Rule: Expand the list of allowable vegetables to substitute for grains to include squash, cassava (yuca), and taro, in addition to USDA's proposal to add prairie turnips.**

Friends of the Earth appreciates the proposal to add prairie turnips to the list of allowable vegetables to substitute for grains, which currently includes yams, plantains, and sweet potatoes.[112] While we understand USDA's acknowledgement that "the proposed list of specific vegetables is not exclusive," we do request that winter squash, cassava (yuca), and taro also be added.

➔ **6e. Update in Final Rule: Require vegetables allowed to be substituted for the grains component to be prepared in ways that align with traditional cultural preparations.**

In instances where vegetables are allowed to be substituted for the grains component, require that these vegetables be prepared in ways that align with traditional cultural preparations, such as baking or boiling. This is imperative to ensure that the intent of the regulations is upheld and to ensure alignment of the Final Rule with the DGA. If culturally relevant foods – and their preparation – are not addressed in combination, a sweet potato could be served in the form of tater tots, for example, and not align with narrowing the gap between child nutrition programs and DGA recommendations.

Section 7. Traditional Foods

➔ **7a. Maintain in Final Rule: Explicitly state in regulation that traditional foods may be served in reimbursable school meals.**

Encouraging and supporting the incorporation of traditional foodways into child nutrition programs is essential to USDA upholding its commitment to serve *all* Americans with dignity and inclusion. Based on current guidance (but not regulations), traditional foods – defined by the Agriculture Improvement Act of 2014 as "food that has traditionally been prepared and consumed by an [American] Indian tribe"[113] – may be served in reimbursable school meals. Friends of the Earth applauds USDA; the Proposed Rule includes explicitly stating in regulation that traditional foods may be served in reimbursable school meals.

➔ **7b. Maintain in Final Rule: Commit to supporting efforts to incorporate traditional foods into school meals, including by addressing barriers to doing so.**

Furthermore, we appreciate the explanation that this change is intended "to emphasize USDA's support for integrating traditional foods into the school meal programs." Additionally, Friends of the Earth agrees that this change is needed to address misconceptions about crediting traditional foods, and we value and want to see maintained in the Final Rule USDA's commitment to "support local efforts to incorporate traditional foods into school meals" and to "Within its authority…work with State agencies and schools to overcome any food safety, crediting, or other barriers to serving traditional foods in school meals to fully realize the intent of the change." While USDA taking this step is important, racism and cultural and

[112] 7 CFR 210.10(c)(3)
[113] 25 U.S.C. 1685(b)(5)

ethnic oppression are intentionally, systemically woven throughout our nation's policies at all levels. A dedicated effort by USDA that includes but also goes beyond an explicit regulation is imperative to realizing USDA's core values and vision.

- ➔ **7c. Update in Final Rule: Consider and support additional populations for whom standard school meals are not reflective of their traditions and cultures.**

While Friends of the Earth understands there are limits on USDA's authority to update regulations specific to "traditional foods" as defined in statute, the Final Rule must to the maximum extent possible consider additional populations for whom the standard school meals are not reflective of their traditions and cultures. The United States is a "melting pot" of cultures from around the world, and as a result, school populations across the country include students with diverse food traditions. Thus, USDA should provide training and technical assistance – for example, in the form of guidance, menus, and recipes – to support the breadth of diverse traditions and cultures across our nation.

Section 10. Nuts and Seeds

- ➔ **10a. Maintain in Final Rule: Allow nuts and seeds to credit for 100 percent of the meat/meat alternate component in all child nutrition programs and meals.**

Under current federal regulations, nut and seed *butters* can be served as a meat/meat alternate (M/MA) and can credit for 100 percent of the M/MA component.[114] Nuts and seeds can also be served as a M/MA, however, unlike their butters and regardless of serving size, they can only credit for 50 percent of the component at breakfast, lunch, and supper and must be served alongside another M/MA in order to achieve the standard two ounce equivalent.[115] The Proposed Rule would allow nuts and seeds to credit for 100 percent of the M/MA component in all CNPs and meals. (At present, this is only allowable for snacks.[116]) Friends of the Earth supports this change and looks forward to seeing it maintained in the Final Rule.

Considering nutrition science, the imperative to provide our children balanced and nourishing meals, and the mandate to align the meal patterns with the DGA, maintaining this change in the Final Rule is incontestable. The nutritional content of nuts and seeds does not change when these foods are blended or pureed into butter form, and nuts and seeds (as well as their butters) listed in FNS guidance are nutritionally comparable to meat and other meat alternates based on available nutritional data.[117] Furthermore, the DGA notes that more than half of Americans do not meet the recommendation for nuts and seeds.[118] Specific to children, while youth meet or exceed the recommended servings for meats, poultry, and eggs, they are under consuming nuts and seeds.[119]

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[114] 7 CFR 210.10(c)(2)(i)(B).
[115] Id.
[116] 7 CFR 210.10(o)(2)
[117] 7 CFR § 225.16(e)(5).
[118] USDA, Dietary Guidelines for American 2020-2025, available at https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf.
[119] USDA, Dietary Guidelines for American 2020-2025, available at https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf.

Exemplifying the additional meal options the change will allow, schools could serve options that credit as one or two M/MA such as:

- Salad with one ounce of sunflower seeds;
- Lunchable style snack pack that includes sunflower seeds;
- Chia seed pudding;
- Walnut and mushroom-based "taco meat";
- Gado-gado peanut butter sauce over steamed vegetables; and
- Rice pilaf with one ounce of pistachios.[120]

Implementation of this change will not only be straightforward but also advantageous to CNP operators, providing more flexibility to serve a nutritious, under-consumed, shelf-stable option that accommodates vegetarian students. As noted in the Proposed Rule: "This change is intended to reduce complexity in the requirements by making the requirements consistent across programs and by removing the discrepancy between nut and seed crediting and nut and seed butter crediting. It also provides more menu planning flexibility for program operators."

➔ **10b. Update in Final Rule: Align the nutritional equivalency FNS has set for nuts and seeds – as well as nut and seed butters – with the DGA.**

Furthermore, the Final Rule should align the nutritional equivalency FNS has set for nuts and seeds – as well as nut and seed butters – with the DGA. The ounce equivalents in NSLP for meat, poultry, tofu, and pulses (beans, peas, and lentils) are all aligned with these recommendations, but the equivalency for nuts and seeds (and their butters) – which are offered as a M/MA – are *not*. Specifically, NSLP requires 1 ounce of nuts/seeds for a 1 ounce equivalent serving, however, according to the DGA, the requirement should be that 1/2 ounce of nuts/seeds = 1 ounce.[121] Along these lines, NSLP requires 2 tablespoons of nut/seed butter for a 1 ounce equivalent serving, however, according to the DGA, the requirement should be that 1 tablespoon nut/seed butter = 1 ounce and 2 tablespoons nut/seed butter = 2 ounces.[122] Making this correct is within the purview of FNS and needs to be addressed in the Final Rule.

Under the current NSLP equivalency for nuts and seeds (and their butters), a 1 ounce equivalent in the M/MA component for peanut butter is 2 tablespoons, which is approximately 7 grams of protein. Requiring 4 tablespoons of nut/seed butters to meet 2 M/MA components is unnecessary and can deter CNP operators from serving nuts, seeds, and their butters due to the expense and unpalatability of such large serving sizes. Such high serving sizes are simply unappealing; stakeholders report of nut butter sandwiches filled with an inedible amount of nut butter being difficult to chew and swallow. For example, Austin Independent School District noted that they serve their nut butter on top of an already protein-rich, seed-filled bread, so offering 4 tablespoons of nut butter on top is far too dense. Other school districts reported choosing to serve a sandwich containing 2 ounces of nut butter alongside a cheese stick to get to 2 M/MAs, which includes more protein than is necessary and adds extra expense.

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[120] These ideas all came from current or former foodservice operators.
[121] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020, p. 146 "Protein Foods (1 ounce eq): 1 ounce lean meats, poultry, or seafood; 1 egg; ¼ cup cooked beans or tofu; *1 tbsp nut or seed butter; ½ ounce nuts or seeds*." [italics added]
[122] Id.

Section 11. Competitive Foods – Hummus Exemption

- ➔ **11a. Maintain in Final Rule: Add hummus to the list of foods exempt from the total fat standard in the regulations, which will allow hummus to be sold as a Smart Snack.**

Under current federal regulations, competitive foods must meet nutrient standards for calories, sodium, fats, and total sugars.[123] Specific to fat, the total fat content of a competitive food must not exceed 35 percent of total calories and the saturated fat must be less than 10 percent of total calories, though there are some exceptions. The Proposed Rule maintains the current competitive food nutrient standards for calories, sodium, fats, and total sugars. It also adds hummus to the list of foods exempt from the total fat standard in the regulations, which will allow hummus to be sold as a Smart Snack. Friends of the Earth supports this change. Allowing hummus to be sold as a Smart Snack will give program operators more flexibility to serve a nutritious, fiber-rich option that accommodates vegetarian students. With ongoing supply chain challenges, it is a no-brainer to enable operators to offer a new option that is available from a wide variety of mainline distributors in a pre-packaged form.

Section 13. Buy American

- ➔ **13a. Maintain in the Final Rule: Establish a 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year.**

We support the Proposed Rule's change to set a 5 percent ceiling on the non-domestic commercial foods a School Food Authority (SFA) may purchase per school year. Continuing to strengthen the Buy American provision is vital to maximizing the impact of domestic purchasing with public dollars on our nation's food and farm economy. We look forward to seeing this change maintained in the Final Rule.

Section 14. Geographic Preference

- ➔ **14a. Maintain in Final Rule: Allow "locally grown, raised, or caught" to be used as procurement specifications for unprocessed or minimally processed food items.**

USDA's proposal to clarify the geographic preference regulation demonstrates the potential of the meal patterns to not only improve the nutritional quality of school meals but also to have positive impacts along the entire food value chain.

Since 2011, child nutrition regulations have allowed for a "geographic preference" but do not adequately address the legislative intent: to allow "local" to be used as a bid specification, which is a written description of the product or service that the vendor must meet to be considered responsive and responsible. Currently, bidders located in a specified geographic area can be provided additional points or credit calculated during the evaluation of the proposals or bids received in response to a solicitation.[124] The Proposed Rule allows "locally grown, raised, or caught" to be used as procurement specifications for

[123] 7 CFR 210.11(f)
[124] 7 CFR 210.21(g) and 220.16(f)

unprocessed or minimally processed food items, which makes it easier for CNP operators to purchase local foods. We support this proposed change and look forward to seeing it maintained in the Final Rule.

This needed regulatory specification will ensure better alignment between CNPs' and USDA's broader vision to spur economic development and the Agency's values of respect, dignity, equity, and inclusion. As USDA's Agricultural Marketing Service explains, "The consumer demand for locally-produced food is creating jobs and opportunity throughout rural America for farms, businesses and entrepreneurs that store, process, market and distribute food locally and regionally."[125] CNP operators have the right to specifically source from farmers, producers, and vendors in their own communities. This change will shift social power to program operators and facilitate more resiliency for school districts in future supply chain disruptions.

- ➔ **14b. Update in the Final Rule: Encourage procurement specifications for "products produced in an environmentally sustainable manner" and for "products produced by a certified organic farm or ranch."**

Prioritizing environmental sustainability in food supply chains can shift U.S. food systems away from practices that contribute to climate change and pollute BIPOC communities and towards a more equitable, sustainable use of our soil and water. This includes prioritizing foods produced sustainably, as well as ensuring protections from existing food and farm-related pollution for frontline farm and food workers and adjacent communities.

Incorporating environmental sustainability – including organic production practices – into CNP procurement syncs with USDA's role "to preserve our Nation's natural resources through conservation, restored forests, improved watersheds, and healthy private working lands"[126] and grow the organic market.[127] CNPs are a substantial part of USDA's work yet so far have not been linked to the agency's climate and conservation initiatives. As explained by the Center for Good Food Purchasing Center, achieving more environmentally sustainable procurement can be achieved through "Sourc[ing] from producers that employ sustainable production systems to reduce or eliminate synthetic pesticides and fertilizers; avoid the use of hormones, routine antibiotics, and genetic engineering; conserve and regenerate soil and water; protect and enhance wildlife habitats and biodiversity; and reduce on-farm energy and water consumption, food waste, and greenhouse gas emissions."[128]

Certified organic production is a specific and crucial method to incorporate in CNP purchasing given the significant benefits to the environment. As USDA explains and research shows, "[organic] methods integrate cultural, biological and mechanical practices that foster cycling of resources, promote ecological balance…contribute to soil health, crop and livestock nutrition, pest and weed management, and conservation of biological diversity",[129] "improve water quality [, and] conserve energy."

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[125]U.S. Department of Agriculture. Local and Regional Food Sector. https://www.ams.usda.gov/services/local-regional/food-sector
[126] U.S. Department of Agriculture. About the U.S. Department of Agriculture. https://www.usda.gov/our-agency/about-usda
[127] U.S. Department of Agriculture. Statement from Agriculture Secretary Tom Vilsack on the Organic Trade Association Report. May 19, 2016. https://www.usda.gov/media/press-releases/2016/05/19/statement-agriculture-secretary-tom-vilsack-organic-trade
[128] Center for Good Food Purchasing. The Program: Values. https://goodfoodpurchasing.org/program-overview/#values
[129] U.S. Department of Agriculture. USDA Certified Organic: Understanding the Basics. https://www.ams.usda.gov/services/organic-certification/organic-basics

To best foster environmental sustainability in the Final Rule, USDA must update the Final Rule to encourage procurement specifications for "products produced in an environmentally sustainable manner verified by a third-party certification" and for "products produced by a certified organic farm or ranch."

- ➔ **14c. Update in the Final Rule: Encourage procurement specifications for "foods produced by a farm with employees who, as permitted by law, are represented by a collective bargaining agreement or memorandum of understanding" and "foods produced by a farm participating in a worker justice certification program."**

The workers who harvest, process, transport, prepare, and serve food deserve the same benefits and legal protections as workers in other industries in our country, however, many do not currently have these. Throughout the supply chain, the federal government must protect the right of workers to organize, ensure healthy and safe working conditions, and pay living wages to frontline food workers.

Valuing workforce across the supply chain – including CNP operators – is necessary to USDA's core values of respect and dignity: "We treat all people with courtesy and respect, and we value the inherent dignity of every individual."[130] and equity and inclusion. Ultimately, doing so will move the Agency closer to alignment with its statement that "Equity is not an add-on or extra."[131]

USDA must center the wellbeing of people across the entire CNP food chain. Both historically and still today, BIPOC populations are harmed by our food and farm system's injustices. From a history of stolen land from Native peoples and enslaved African peoples, colonization, detribalization, and destruction of traditional foods – to present-day unsafe working conditions on farms and in slaughterhouses; inequitable access to land, capital, and other resources; and economic disparities in food and farm worker pay (majority BIPOC professions) – USDA regulations contribute to perpetuating this system, and with profound impacts. BIPOC represent a disproportionate percentage of frontline, low-wage food chain workers that prop up a system that intentionally, systematically suppresses power and causes harm.[132]

As the Center for Good Food Purchasing explains, a valued workforce will be achieved through procurement that "Ensure[s] that food suppliers respect workers' rights to freedom of association and to bargain collectively for better wages and working conditions, free from retaliation." Making updates to the Final Rule in alignment with a valued workforce will enable program operators to source from producers and vendors that value employees as full humans and enable them to thrive through strategies for well-being (e.g., living wages, benefits, stability, safety).

To best foster a valued workforce in the Final Rule, USDA must update the Final Rule to encourage procurement specifications for "foods produced by a farm with employees who, as permitted by law, are represented by a collective bargaining agreement or memorandum of understanding" and "foods produced by a farm participating in a worker justice certification program."

[130] U.S. Department of Agriculture. Strategic Plan Fiscal Years, 2022-2026. March 2022, p.3.
[131] U.S. Department of Agriculture. Equity at USDA. https://www.usda.gov/equity
[132] HEAL Food Alliance. *Food, Race and Labor: A Brief Explainer*. https://healfoodalliance.org/a-brief-explainer-on-food-and-labor/

➔ **14d. Update in the Final Rule: Encourage bid specifications for "foods produced by an historically underserved, socially disadvantaged, or limited resource farmer or producer."**

Progress towards a just food system requires us to address the historic and ongoing structural racism embedded in the U.S. food system and to actively promote food sovereignty and racial equity in food procurement, as well as culturally appropriate and inclusive menus.

Incorporating racial equity and justice into CNP purchasing aligns with values-aligned procurement and also uplifts USDA's core values of respect, dignity, equity, and inclusion.[133] USDA will accomplish this by concretely responding to children's needs and concerns, resolving operators' challenges, addressing the impacts of racism on current regulations, and encouraging operators to source from socially disadvantaged producers.

USDA is actively working to repair its longstanding history of institutional racism, oppression, and discrimination[134] in its programs and services.[135] The Agency explains its Equity Commission: "At USDA, we acknowledge we have not done enough to provide all farmers and ranchers an equal chance of success and prosperity. We are committed to changing that, actively working to build a USDA that ensures none of our customers are ignored or left behind."[136] A necessary step towards this goal is allowing its CNPs to contribute to this long overdue effort by purchasing both via guidance on specifications to prioritize diverse suppliers, as well as bids structured to address barriers to entry for BIPOC-owned and -operated businesses.

To best foster racial equity and justice in the Final Rule, USDA must update the Final Rule to allow and encourage a bid specification for "foods produced by an historically underserved, socially disadvantaged, or limited resource farmer or producer."

➔ **14e. Update in the Final Rule: Encourage procurement specifications for "animal products produced by a farm participating in an independent animal welfare certification program."**

Humane treatment of animals in food production is a key part of a respectful, relational – not extractive – food system. Inhumane conditions in meat and poultry production are intertwined with the corporate consolidation of our food system and the prioritization of cheaply produced meat at the expense of animal welfare, worker safety, farmer livelihoods, and community health. Additionally, prioritizing suppliers who practice judicious use of antibiotics in livestock production will safeguard human health as well as animal health.

Many Americans – including young people – are concerned about animal welfare, and USDA has a responsibility to help program operators meet this demand for more humane options. According to a 2022 survey conducted by the ASPCA, 44 percent of respondents reported that concern for farm animal welfare motivated them to reduce their animal product consumption.[137] In that same survey, "89 percent of Americans are concerned about industrial animal agriculture, citing animal welfare, worker safety, public

[133] U.S. Department of Agriculture. Strategic Plan Fiscal Years, 2022-2026. March 2022, p.3.
[134] Racial Equity Tools. Glossary. https://www.racialequitytools.org/glossary
[135] U.S. Department of Agriculture. Advancing Equity at USDA. https://www.usda.gov/equity-commission
[136] U.S. Department of Agriculture. Advancing Equity at USDA. https://www.usda.gov/equity-commission
[137] ASPCA. Public Opinion Surveys on Farm Animal Welfare. https://www.aspca.org/protecting-farm-animals/aspca-surveys

health risks or the environment as a concern."[138] Farms that provide healthy and humane conditions for farmed animals also employ regenerative animal husbandry practices with conservation benefits and potentially reduce worker exposure to the harmful working conditions often found in industrial animal production.

To meet student and program operator demand for more humanely raised animal products, FNS should update the Final Rule to allow and encourage CNP operators to include as a bid specification "animal products produced by a farm participating in an independent animal welfare certification program."

Section 15. Miscellaneous Changes

- **15a. Maintain in Final Rule: Change the name of the meat/meat alternate component to "protein sources."**

The Proposed Rule includes changing the name of the meat/meat alternate meal component in NSLP, SBP, and CACFP regulations to ''protein sources."[139] The foods within this meal component would remain unchanged. Friends of the Earth supports this change. The term "Meat/Meat Alternate," which does not appear in the DGA, creates a negative perception of plant-based sources of protein and is confusing to CNP professionals, parents, and students. As one program operator put it, "Most people think I'm referencing the ultimate fighting championships when I use the term 'M/MA.'"

- **15b. Maintain in the Final Rule: Change the name for the "legumes (beans and peas)" vegetable subgroup to "beans, peas, and lentils."**

The DGA changed the terminology for the "legumes (beans and peas)" vegetable subgroup to "beans, peas, and lentils."[140] The foods within this vegetable subgroup did not change. USDA proposes to change the name of the "legumes (beans and peas)" vegetable subgroup in the meal pattern regulations to align with the DGA. Under this proposal, all references in 7 CFR parts 210 and 220 to "legumes (beans and peas)" would change to "beans, peas, and lentils." The foods within this subgroup would remain unchanged. USDA is also proposing to change references to "dry beans and peas (legumes)" in 7 CFR part 226 to "beans, peas, and lentils." Friends of the Earth supports these proposals and looks forward to seeing them maintained in the Final Rule.

- **15c. Update in the Final Rule: Include quinoa and other grains high in protein in the new "protein sources" meal component.**

While Friends of the Earth supports changing the name of the M/MA component to protein sources, we also believe that if USDA is creating a novel meal component distinct from the Protein Foods Group in the DGA by including cheese and yogurt in the "protein sources" category, then USDA should include quinoa and other complete grains high in protein in the "protein sources" component. Quinoa is classified as a whole grain, with one cup cooked providing about 8 grams of protein. The protein in quinoa – like

[138] Id.
[139] 7 CFR parts 210, 220, and 226
[140] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020.

that of beef, pork, eggs, fish, dairy, and soy – is complete; it contains all nine essential amino acids the human body needs. Insofar as FNS allows for other foods that are not within the Protein Foods Group in the DGA, such as cheese, to be used to meet all or part of the protein sources component, the Agency should also allow foods from other food groups, including certain grains with complete protein, such as quinoa, amaranth, and buckwheat.

Examples of dishes that CNP operators noted they will serve when quinoa counts as an M/MA (or, in the future, "protein source") component include:

- Moroccan Tagine over Quinoa bowl;
- Quinoa and Roasted Mixed Vegetable Wrap;
- Quinoa and Edamame Fried Rice; and
- Tex Mex Salad with Beans and Quinoa.[141]

This flexibility will enable school chefs and menu planners to be more creative while still ensuring students receive a sufficient amount of protein.

➔ **15d. Update in Final Rule: Phase out processed meats by the 2027-2028 school year.**

The World Health Organization classifies processed meat as a Group 1 carcinogen, in the same category as tobacco.[142] The DGA states that "most intake of meats and poultry should be from fresh, frozen, or canned, and in lean forms (e.g., chicken breast or ground turkey) versus processed meats (e.g., hot dogs, sausages, ham, luncheon meats)."[143] The DGA also concluded that "dietary patterns characterized by higher intake of red and processed meats, sugar-sweetened foods and beverages, and refined grains are, in and of themselves, associated with detrimental health outcomes."[144]

These recommendations to limit processed meat are not reflected in current CNP regulations. A 2019 Friends of the Earth analysis of California lunch menus found that 16 percent of entrees contained processed meat (per the WHO definition).[145] The public health organization Balanced analyzed 20 days of menus from the 15 largest school districts in 2019 and found that 87 percent of the meat items offered were red or processed meat.[146] They repeated this analysis in 2021 and found that number dropped to 68 percent.[147] All of these findings are inconsistent with DGA recommendations to limit intake of processed meat.

For the wellbeing of our children, the USDA should align school menus with DGA recommendations by phasing out processed meats from CNP meal patterns by the 2027-2028 school year.

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[141] All of these examples came from current or former food service operators.
[142] Bouvard, V., Loomis, D., Guyton, K. Z., Grosse, Y., Ghissassi, F. E., Benbrahim-Tallaa, L., Guha, N., Mattock, H., & Straif, K. (2015). Carcinogenicity of consumption of red and processed meat. *The Lancet Oncology*, *16*(16), 1599–1600. https://doi.org/10.1016/S1470-2045(15)00444-1
[143] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020, p.33.
[144] Id., p.33.
[145] Hamerschlag, K. and Kraus-Polk, J. Friends of the Earth. The State of School Lunch in California (March 2021). Available at https://foe.org/resources/the-state-of- school-lunch-in-california/.
[146] Bennett, M. (2021, July 7). *Pandemic Menus: Are changes to school meals here to stay?* Balanced. https://www.balanced.org/post/pandemic-menus-are-changes-to-school-meals-here-to-stay
[147] Id.

➔ **15e. Update in Final Rule: Encourage schools to offer daily plant-based options beyond a nut butter sandwich.**

As described in Sections III(a) and III(b), daily plant-based meal options would foster greater alignment with the DGA, provide healthy choices for all students, and accommodate students who follow a strict plant-based diet. While we encourage schools to offer nut butter sandwiches, a broader array of plant-based options are needed for students who choose or need to eat plant-based often or always.

We recognize that for some CNP operators, switching to providing daily plant-based options could present significant cost and operational challenges. We urge FNS to encourage operators to provide daily plant-based options beyond a nut butter sandwich in the Final Rule. We also encourage FNS to provide technical assistance and support to achieve this goal, including by:

- Hosting webinars and creating fact sheets;
- Publishing more plant-based recipes;
- Publishing a template meal substitutions request form as described in Section 3(e);
- Working with USDA's Agricultural Marketing Service to add more plant-based ingredients and products (e.g., lentils, tofu, a black bean burger, soy nuggets) to the USDA Foods Available List; and
- Leveraging its Healthy Meals Incentive Initiative to support SFAs and food companies to expand nutritious plant-based offerings.

➔ **15f. Update in Final Rule: Allow beans, peas, and lentils – as well as tofu and soy products – to qualify as a meat alternate even if they are not visually recognizable.**

CNPs are a crucial point of leverage to instill nutritious eating habits at a young age and combat diet-related disease, especially for the many children who rely on free and reduced-price meals as their primary source of nutrition. USDA has rightly recognized that these meals not only need to be nutritious but also need to help children recognize what nutritious food looks like beyond CNP settings.[148] However, current FNS regulations requiring plant-based protein foods to be "visually recognizable" to qualify as a meat alternate (M/MA) create barriers for program operators to serve nutritious, plant-based sources of protein. In August 2016, FNS published guidance requiring tofu and soy products to be "visually recognized" as a MA to fully credit in school meal programs and CACFP.[149] FNS expanded the scope of this requirement in recent guidance[150] to include all food components, providing that if a "dish does not contain at least 1⁄8 cup of a recognizable component then the blended foods do not contribute to the meal requirements."[151]

By updating these regulations, FNS will allow greater variety in nutritious choices while also moving closer to its goal to teach children how to build a nutritious plate. FNS should provide program operators flexibility to offer beans, peas, and lentils as MA in forms that are attractive and familiar to students, such

[148] USDA, FNS, SP53 CACFP 21-2016.
[149] USDA, FNS, SP53 CACFP 21-2016.
[150] Hamerschlag, K. and Kruas-Polk, J. Friends of the Earth, The State of School Lunch in California (March 2021). Available at https://foe.org/resources/the-state-of- school-lunch-in-california/.
[151] USDA, FNS Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022 (March 2, 2022), 41. Available at https://www.fns.usda.gov/cn/sp052022-questions-answers-program- operators

as pulse-based pastas, burgers, dips, and pureed soups. Examples of nutritious options that program operators indicated they would like to serve if this regulation were not in place include:

- Veggies with a dip made of soft tofu;
- Mung bean fritters;
- Pureed bean and lentil soups and dips;
- Pasta with red lentil bolognese;
- Lasagna with tofu "ricotta;"
- Sweet potato and chickpea tots;
- Fruit smoothies with silken tofu; and
- Chickpea or lentil patties.

In addition to these barriers, the "visually recognizable" requirement may inadvertently disincentivize scratch cooking. A result of operating within a complex set of regulations is that many schools have turned from scratch cooking to CN-labeled processed foods that they know will meet the guidelines. This consequence – whether intended or not – is in direct contradiction to USDA's role to ensure nourishing meal programs. The current "visually recognizable" requirement results in the overexposure of children to processed food items that mimic fast food. While the processed foods children see in schools – such as pizza – may be reformulated to have fewer calories, saturated fat, and sodium than restaurant or store-bought pizza,[152] students – unaware of the difference – may be inadvertently conditioned to choose processed items outside of school. Allowing school culinary professionals more flexibility to serve whole plant-based ingredients in a variety of forms will make scratch cooking more approachable for some schools, and exposing kids to delicious scratch-cooked foods in CNP settings will inspire them to seek those same foods outside of school.

Children can learn that nutritious food comes in various forms. Food recognition for children is generally gained through experience.[153] If children can learn that chicken nuggets contain protein, children can learn that protein can come in the form of a pulse-based pasta as well. In fact, we want to teach kids that plant-based sources of protein are highly versatile and come in many forms. If a student does not like the texture of whole black beans in a taco, they may still love a black bean dip. A student might not care for a lentil salad but would love a lentil bolognese sauce that reminds them of the beef bolognese they have tried before. Exposing students to more plant-based options in school will foster them walking away with knowledge on how to incorporate a greater variety of nutritious foods into their diets in delicious and appealing ways. In turn, this would be a success not only for our school and CACFP meal programs but also for USDA's overarching vision and core values.

USDA can allow "unrecognizable" beans, peas, and lentils and tofu products while still teaching children how to build a nutritious plate. Friends of the Earth acknowledges that USDA understandably wants to avoid "hiding" nutritious foods or reverting to nutrient-based menu planning. Consulting with stakeholders, Friends of the Earth developed four options for USDA to offer program operators more

[152] Masset G, et al, Modeled Dietary Impact of Pizza Reformulations in US Children and Adolescents. PLoS One. 2016 Oct 5;11(10):e0164197, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5051708/.
[153] Slyter K, 8 Proven Tips on How to Get Kids to Eat Healthy (April 1, 2019), Rasmussen University, available at https://www.rasmussen.edu/degrees/education/blog/how-to-get-kids-to-eat-healthy/.

flexibility to credit plant-based sources of protein in different forms while still achieving its goals around nutrition education:[154]

- Allow whole foods to be served in forms that are not visually recognizable, since blended or pureed whole foods retain valuable macronutrients,[155] as opposed to extracts or supplements, which can lose vital nutrients during processing.[156]
- Require that menu items containing foods that are not visually recognizable be labeled to include the name of the food that is not visually recognizable. For example, the chickpeas in USDA's tasty tots recipe could credit toward a MA if the dish is labeled "sweet potato and chickpea tots."
- Allow schools to serve foods that are not visually recognizable if the food is likely to be found in that form outside of the cafeteria. For example, students are likely to encounter pureed bean soups and dips outside the cafeteria.
- Allow foods to credit when served in forms that are not visually recognizable only when the dish does not contain more than a de minimis amount of added sugar and saturated fat. This would prevent "hiding" nutritious foods in desserts, where the benefits of increasing consumption of whole plant-based foods could be outweighed by the cost of increasing consumption of foods that negatively impact health, like sugar and saturated fats.

Friends of the Earth recommends the following updates to the 2022 guidance[157] (additions are underlined, deletions are ~~struck through~~):

> *Question 41: How does tofu credit?*
>
> ~~Firm or extra firm tofu in stir-fries, omelets, and miso soup may credit towards the meat alternate component. However, for miso soup, the miso paste dissolved into the broth does not credit. Similarly, a soft tofu, pureed into a soup, does not credit because it is not recognizable and does not represent a meat substitute. Therefore, the blended tofu is not creditable.~~ All tofu, including tofu served in stir fries, omelets, and miso soup, may credit towards the meat alternate component. However, pureed tofu incorporated into dishes that would not typically contain tofu outside of the cafeteria – such as soft tofu blended into a soup or baked good – does not credit toward the meat alternate component unless the dish is labeled to indicate that it contains tofu. For example, a silken tofu tomato sauce with pasta could only credit toward the meat alternate component if it is labeled as "Pasta with tofu tomato sauce."
>
> *Question 104: May unrecognizable food ingredients contribute to meal pattern requirements (for example, carrots pureed in a sauce for Macaroni and Cheese)?*
>
> Yes, pureed foods such as pulses (beans, peas, and lentils), fruits or vegetables may contribute to meal pattern requirements, provided that at least one of the following conditions are met:

[154] Any one of these options would suffice; we do not recommend that USDA require all four conditions to be met.
[155] Mayo Clinic, Supplements: Nutrition and healthy eating (Nov. 17, 2020), available at https://www.mayoclinic.org/healthy-lifestyle/ nutrition-and-healthy-eating/in-depth/supplements/art-20044894?p=1.
[156] Better Health Channel, Food processing and nutrition (6/30/2022) available at https://www.betterhealth.vic.gov.au/health/ healthyliving/food-processing-and-nutrition#bhc-content.
[157] USDA, FNS Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022 (March 2, 2022), 41. Available at https://www.fns.usda.gov/cn/sp052022-questions-answers-program- operators

1) The dish that contains them also provides an adequate amount of recognizable, creditable pulses (beans, peas, and lentils), fruits or vegetables (⅛ cup is the minimum recognizable amount).
2) The pureed food is served in a form that is common such that students are likely to encounter the food in that form outside of a school cafeteria setting. The intention of this requirement is to prevent "hiding" healthy foods so that students learn to recognize what healthy foods look like. For example, pureed vegetable or black bean soups, bean or chickpea fritters such as falafels, refried beans, and aloo palak (spinach and potato curry) are all creditable because these foods are all commonplace outside of school cafeterias.
3) The dish is labeled to include the name of the pulse, fruit, or vegetable that is unrecognizable. For example, carrots pureed into a sauce for macaroni and cheese could credit as a vegetable with a label of "Macaroni with carrot 'cheese' sauce."

➔ **15g. Update in Final Rule: Allow pulse-based pasta to credit as a meat alternate regardless of whether it is served alongside a visually recognizable meat/meat alternate, and allow beans, peas, and lentils to credit as a meat alternate in smoothies.**

We are grateful that FNS has already relaxed guidance to permit pureed beans, peas, and lentils added to smoothies[158] and pulse-based pasta to credit as vegetables towards the weekly 1⁄2 cup pulses requirement[159] to increase options for operators to meet this vegetable subgroup requirement. FNS was right to provide the flexibilities for beans, peas, and lentils in smoothies and for pulse-based pasta to count toward the vegetable requirement, but there is nothing in the DGA that would justify FNS' disparate treatment of beans, peas, and lentils crediting in these circumstances as vegetables but not as MA. Beans, peas, and lentils must be extended the same flexibility to be served as a MA in smoothies and pulse-based pasta. To illustrate this point, it is illogical that a red lentil pasta served with broccoli *would not* be creditable as MA and a vegetable, but a red lentil pasta served with beef *would* be creditable as a MA and a vegetable. In fact, the former option is more likely to support DGA recommended intakes of vegetables and fiber-rich proteins, both of which are under-consumed by children.[160]

Friends of the Earth recommends the following updates to the 2022 guidance[161] (additions are underlined, deletions are ~~struck through~~):

> *Question 33: How may schools include ~~beans/peas (legumes)~~ beans, peas, and lentils (pulses) in school lunch menus?*

[158] USDA, FNS Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022 (March 2, 2022), 41. Available at https://www.fns.usda.gov/cn/sp052022-questions-answers-program- operators; See also USDA, FNS Memo SP40 CACFP17 SFSP17-2019, Smoothies Offered in Child Nutrition Programs (Sept. 23, 2019). Available at https://www.fns.usda.gov/cn/smoothies-offered-child-nutrition-programs.
[159] USDA, FNS Memo SP26 CACFP13 SFSP12-2019 Revised, Crediting Pasta Products Made of Vegetable Flour in the Child Nutrition Programs (Apr. 17, 2019). Available at https://www.fns.usda.gov/cn/crediting-pasta-products-made-vegetable-flour-child-nutrition- programs.
[160] USDA, The Dietary Guidelines for Americans 2020-2025, 34. Available at https://www.dietaryguidelines.gov/sites/default/ files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf.
[161] USDA, FNS Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022 (March 2, 2022), 41. Available at https://www.fns.usda.gov/cn/sp052022-questions-answers-program- operators

Pasta products made of vegetable flour may also credit as vegetables or meat/meat alternates ~~legumes~~ and are an innovative way to offer vegetables in a food item that is popular with children. For example, pasta made of 100 percent red lentil flour credits toward the weekly ½ cup legumes requirement and toward either the daily vegetable or M/MA requirement, or both if served in a sufficient quantity. [See also Sections 15(h) and 15(i) below for additional proposed guidance for this question.]

➔ **15h. Update in Final Rule: Clarify that beans, peas, and lentils can credit as both a vegetable and meat alternate on the same day if served in sufficient quantities, even if they are served in the same meal.**

CNP operators have expressed confusion as to whether and when it is permissible to offer beans, peas, and lentils to satisfy both the M/MA and the vegetable component if served in a sufficient quantity such that the beans, peas, and lentils are not "double counted." Beans, peas, and lentils – when served in quantities to provide sufficient calories and nutrients and so that double-counting does not occur – should be allowed to credit as a M/MA and a vegetable in the same meal, regardless of whether the pulses are contained in a single dish or two dishes. For example, a chili that includes ¼ cup of black beans, ¼ cup of lentils, and ¼ cup of tomatoes should fulfill both the M/MA and vegetable requirements. If ½ cup of refried pinto beans and a salad containing ¼ cup of black beans are both taken by a student, that should fulfill both the M/MA and vegetable requirements. Friends of the Earth urges FNS to ensure this is clearly allowable in the Final Rule and accompanying guidance.

The current guidance that pulses *may not* be offered as both a meat alternate and as a vegetable in the same meal in question 33 of the 2022 Guidance Memo on the Transitional Standards is likely to be interpreted as conflicting with the response to question 35, which states that a school *may* offer two distinct servings of legumes in one meal if they are contained in two separate dishes.[162] We encourage USDA to update both of these to clarify that beans, peas, and lentils can credit as both a vegetable and meat alternate on the same day if served in sufficient quantities, even if they are served in the same meal.

Friends of the Earth recommends the following updates to the 2022 guidance[163] (additions are underlined, deletions are ~~struck through~~):

Question 33: How may schools include beans, peas, and lentils (pulses) in school lunch menus?

[See also Section 15(g) above and Section 15(i) below for additional proposed guidance for this question.] ~~Dry/mature beans and peas~~ A single serving of beans, peas, or lentils (pulses) may be offered either as a meat alternate or as a vegetable, but not as both (because double-counting would reduce overall calories). For example, a single serving of refried beans that are offered as a vegetable cannot simultaneously credit toward the meats/meat alternates requirement (because double-counting would reduce overall calories). ~~in the same meal~~. ~~Menu planners must determine~~

[162] U.S. Department of Agriculture. Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards 1320 for Milk, Whole Grains, and Sodium. March 2, 2022. https://fns-prod.azureedge.us/sites/default/files/resource-files/SP05-2022os.pdf

[163] USDA, FNS Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022 (March 2, 2022), 41. Available at https://www.fns.usda.gov/cn/sp052022-questions-answers-program- operators

~~in advance how to count beans/peas in a meal.~~ ~~For example, refried beans can be offered as a vegetable in one meal, and as a meat alternate in a different meal. When a school offers refried beans as a vegetable, the refried beans credit toward the weekly beans/peas vegetable subgroup requirement.~~

…

~~*Question 35. If a school offers two servings of beans/peas (legumes) during one meal, can one serving count as a vegetable and one serving count as a meat alternate?*~~

However, if two different dishes containing beans, peas, or lentils (pulses) are offered, one dish can credit as a meat alternate and the other as a vegetable. For example, taking a lentil salad containing ½ cup of lentils and a bean burrito containing ¼ cup of beans would fulfill both the meat alternate and vegetable requirements.

If a single dish containing two servings of beans, peas, or lentils (pulses) are offered, that dish can credit as a meat alternate and as a vegetable for the same student. For example, a chili that includes ¼ cup of black beans, ¼ cup of lentils, and ¼ cup of tomatoes would fulfill both the M/MA and vegetable requirement. ~~A school may offer two distinct servings of beans/peas (legumes) in one meal if they are contained in two separate dishes. For example, legumes may be offered as part of a salad (vegetables component) and as part of chili/bean soup (meats/meat alternates component).~~

➔ **15i. Update in Final Rule: Allow a single pulse dish to credit as a vegetable *or* meat alternate on the same day.**

Under current guidance, a CNP operator must choose in advance whether a dish featuring beans, peas, and lentils will credit as a vegetable or M/MA on a given day.[164] In other words, a lentil salad containing ½ cup of lentils cannot credit as a vegetable for Mary but a M/MA for Paul on the same day.

This is an unnecessary barrier for students who follow plant-based or vegetarian diets or are picky eaters. For example, suppose a district utilizing the offer versus serve model is offering baked beans, broccoli, a whole grain roll, orange slices, chicken nuggets, and milk. Under the current rules, a SFA must decide in advance if beans will count as a vegetable or M/MA. If a school decides in this example that the baked beans are a vegetable, that means that if a student wanted to take the baked beans, broccoli, and the roll, the meal would not be reimbursable because the meal contains two vegetables and a grain (but no M/MA, so it does not include three components). Or, if the SFA decides to count the baked beans as a M/MA, then a student could not choose chicken, beans, and orange slices as a reimbursable meal because the meal contains two M/MA and a fruit but no vegetable. Both of these meals should be reimbursable.

[164] The response to Question 33 in the most recent guidance (SP-05-2022) includes: "Dry/mature beans and peas may be offered either as a meat alternate or as a vegetable, but not as both in the same meal. *Menu planners must determine in advance how to count beans/peas in a meal.* For example, refried beans can be offered as a vegetable in one meal, and as a meat alternate in a different meal. (emphasis added)"

In the Final Rule, Friends of the Earth urges USDA to include guidance that allows the same dish containing pulses to credit as a vegetable *or* M/MA on the same day. Providing this flexibility will help accommodate students who follow plant-based, dairy-free, and vegetarian diets and picky eaters in creating reimbursable meals out of the few components on the menu on any given day that they are able to eat.

Accordingly, Friends of the Earth recommends the following updates to the 2022 guidance[165] (additions are underlined, deletions are ~~struck through~~):

> *Question 33: How may schools include beans/peas (legumes) in school lunch menus?*
>
> …Menu planners do not need to ~~must~~ determine in advance how to count ~~beans/peas~~ beans, peas, and lentils (pulses) in a meal. A single serving of beans, peas, or lentils (pulses) may credit as a vegetable for one student and as a M/MA for another student on the same day. For example, ½ cup of refried beans can be offered as a vegetable or a meat alternate in the same meal, where the dish credits as a vegetable for one student and a meat alternate for another student depending on the other dishes the students choose to take. ~~refried beans can be offered as a vegetable in one meal, and as a meat alternate in a different meal. When a school offers refried beans as a vegetable, the refried beans credit toward the weekly beans/peas vegetable subgroup requirement.~~
>
> [See also Sections 15(g) and 15(h) above for additional proposed guidance for this question.]

Section 17. Proposals from Prior USDA Rulemaking.

- ➔ **17a. Maintain in Final Rule: Allow pulses offered as a meat alternate to count toward the weekly pulse vegetable requirement.**

Friends of the Earth supports USDA's proposal to allow pulses offered as a MA to count toward the weekly pulse vegetable requirement. Doing so will allow menu planners who offer at least ½ cup of pulses as a MA to also count the same ½ cup of pulses toward the weekly vegetable pulse subgroup requirement. USDA rightly points out in the Proposed Rule that "even though the pulses would be included on the menu as a [MA], children would still be exposed to pulses and the nutrients they provide."

CNP operators have reported that when pulses are served as a side to meet the weekly vegetable subgroup requirement, students are less likely to choose them than when pulses are incorporated into entrees. This is counter to the needed direction for the meal patterns given that all vegetable subcategories are under consumed relative to DGA recommendations.[166] When pulses are served as a MA, however, they typically displace animal proteins, for which youth are typically already meeting or exceeding DGA recommendations.[167] Thus, this change will help to incentivize beans, peas, and lentils to be served as

[165] USDA, FNS Memo SP 05-2022, Meal Requirements Under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators Updated to Support the Transitional Standards for Milk, Whole Grains, and Sodium Effective July 1, 2022 (March 2, 2022), 41. Available at https://www.fns.usda.gov/cn/sp052022-questions-answers-program- operators
[166] U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020,p. 80, 83, 86
[167] Id.

MAs and to better align with DGA recommended intakes of pulses and animal proteins. This proposal will also support the DGA recommendation to diversify protein intake (see Section III(a)(iii)) and reduce the carbon footprint of CNPs (see Section III(d)).

V. Looking Ahead

Friends of the Earth again would like to express appreciation to USDA for its efforts to comprehensively update child nutrition program meal patterns to best align with the *Dietary Guidelines for Americans*. We applaud the proposed updates that will better nourish our children – who are our future – and better support CNP culinary professionals – who are our superheroes making this all possible. To ensure successful implementation, we urge USDA to provide comprehensive training and technical assistance to CNP operators and to ease their burden by streamlining regulations across programs wherever possible.

Furthermore, we urge USDA to facilitate plant-forward menus and plant-based options that will maximize the impact of the updated regulations on alignment with the DGA, child nutrition, our environment, our economy, and equity and inclusion. USDA must center its full set of core values into the Final Rule so that *all* people are respected, valued, and included and thus will thrive.

Chloë Waterman

Chloë Waterman
Senior Program Manager, Climate-Friendly Food Program
Friends of the Earth