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Locke Lord QuickStudy: USDA's Proposed Revisions to School Nutrition Standards Put Pressure on Food Manufacturers

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For several years, the U.S. Department of Agriculture ("USDA") has been working to revise the dietary requirements for the National School Lunch Program ("NSLP") and other federally funded school meal programs. On February 7, 2023, USDA proposed new regulations meant to harmonize NSLP and other meal programs with the most recent recommendations from the USDA and the Department of Health and Human Services for healthy diets as set forth in the joint publication *Dietary Guidelines for Americans 2020-2025*. 88 Fed. Reg. 25, 8050-143 (Feb. 7, 2023). The proposed regulations will phase in new requirements over the next several years. USDA will accept comments until April 10, 2023 on the proposed regulations.

We summarize below some of the most significant challenges for the food manufacturing community in the new proposals.

Added Sugars

The product-based limits would restrict the amount of added sugars for the following products:

- *Grain-based desserts*: Grain-based desserts including cereal bars, doughnuts, sweet rolls, toaster pastries, coffee cakes, and fruit turnovers would be limited to no more than 2 ounces of added sugar equivalents per week for school breakfast programs consistent with requirements already in place for school lunch programs;
- *Yogurt*: Yogurts would be limited to no more than 12 grams of added sugars per 6 ounces; and
- *Flavored Milk*: Flavored milk would be limited to no more than 10 grams of added sugars per 8 fluid ounces for K-5 grade programs and 15 grams of added sugar per 12 fluid ounces for 6-12 grade programs.

88 Fed. Reg. 25 at 8057.

More impactful would be the weekly dietary limits, which would require not only compliance with the product-based limits but also reduce the amount of added sugars present in the weekly menu plan to less than 10% of total calories per week for both school breakfast and lunch programs. *Id.*

These changes may require significant product reformulation to meet the compliance standards, including the additional use of natural sweeteners and modifications of other ingredients.

Whole Grains

Over the last decade, USDA has been working to revise the requirements covering what fraction of the amount of weekly grains offered in school meal programs must meet the USDA's requirements for whole grain-rich foods to bring recommendations in harmony with the *Dietary Guidelines for Americans*. Whole-grain rich products must contain at least 50% whole grains and any other grain ingredients must be enriched, bran, or germ. Products that exceed the 50% threshold, including 100% whole grain products, meet USDA's criteria. 88 Fed. Reg. 25 at 8062.

Under the temporary transitional standards that went into effect on July 1, 2022, at least 80% of the weekly grains offered in school meal programs must be whole-grain rich while any others must be enriched. *Id.* USDA, however, has proposed two options for requirements going forward: (1) making the transitional standard permanent; or (2) requiring that all grains offered as part of school meal programs be whole grain-rich, except that one day each school week, a school may offer enriched grains.

Going forward under either proposal, the food manufacturing community would be well served to focus on increasing whole-grain rich products to meet these requirements and stay in step with current and future USDA dietary recommendations.

Limits on Sodium

USDA understands the biggest challenge to the food manufacturing community arising from its new proposals relates to limits on the weekly intake of sodium in both school lunch and breakfast programs. 88 Fed. Reg. 25 at 8065-66. In an effort to reduce sodium intake, USDA has already enacted transitional limits on the average amount of sodium in any school lunch or breakfast as calculated based on the entire weekly menu:

National School Lunch Program Transitional Sodium Limits		
Age/Grade Group	Target 1: effective July 1, 2022	Interim Target 1A: effective July 1, 2023
Grades K-5	≤ 1,230 mg.	≤ 1,110 mg.
Grades 6-8	≤ 1,360 mg.	≤ 1,225 mg.
Grades 9-12	≤ 1,420 mg.	≤ 1,280 mg.

School Breakfast Program Transitional Sodium Limits	
Age/Grade Group	Target 1: effective July 1, 2022
Grades K-5	≤ 540 mg.
Grades 6-8	≤ 600 mg.
Grades 9-12	≤ 640 mg.

Id.

USDA's proposals would further limit the average daily sodium intake by reducing the totals by 10% every two years through 2025-2029.

Proposed National School Lunch Programs Sodium Limits			
Age/Grade Group	Sodium limit: effective July 1, 2025	Sodium limit: effective July 1, 2027	Sodium limit: effective July 1, 2029
Grades K-5	≤ 1000 mg.	≤ 900 mg.	≤ 810 mg.
Grades 6-8	≤ 1105 mg.	≤ 990 mg.	≤ 895 mg.
Grades 9-12	≤ 1150 mg.	≤ 1035 mg.	≤ 935 mg.

Proposed School Breakfast Program Sodium Limits		
Age/Grade Group	Sodium limit: effective July 1, 2025	Sodium limit: effective July 1, 2027
Grades K-5	≤ 485 mg.	≤ 435 mg.
Grades 6-8	≤ 540 mg.	≤ 485 mg.
Grades 9-12	≤ 575 mg.	≤ 520 mg.

Id. at 8066-67. In total, the average daily sodium intake in a school lunch program would be reduced by over 400 mg in a seven-year period, while school breakfast would be reduced by over 100 mg during that same timeframe. *Id.* at 8065-57.

In addition, USDA proposes enacting individual product-based limits on what it perceives to be the largest contributors to sodium in school meal programs, sandwiches and condiments. *Id.* at 8067.

Meeting USDA's current proposals will likely require substantial efforts to reduce sodium further in many food products that have already been the subject of considerable lowering efforts within the food manufacturing industry. We expect that the investment required to achieve the final sodium goals USDA has set forth will not be insignificant.

Conclusion

USDA's current proposals to change national school meal programs will require altering the composition of many food products currently being sold to school systems around the country. Locke Lord's Food, Beverage, and Cosmetics team is available to assist your company with navigating the various new requirements and responding to these new proposed regulations.

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