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Ms. Julie Brewer, Chief  
Policy and Program Development Branch  
Child Nutrition Service, Department of Agriculture  
3101 Park Center Drive  
Alexandria, Virginia 22302-1594

**Re: Docket ID No. USDA-2007-0038**

Dear Ms. Brewer:

Harvard Law School's Emmett Environmental Law and Policy Clinic ("ELPC")<sup>1</sup> submits the following comments in response to the USDA's proposed changes to nutrition standards for the National School Lunch and School Breakfast Programs ("NSLP"). As we will explain in detail below, for NSLP to fully comply with applicable laws, Executive Orders, and USDA's own policies, ELPC suggests:

- Conducting a Civil Rights Impact Analysis on the basis of religion
- Requiring schools to serve a daily vegetarian option
- Crediting low-fat non-dairy milk as an option for all children
- Replacing meat/meat alternates with a protein requirement
- Prohibiting the practice of separate lines for à la carte items
- Using half of entitlement and bonus funds to provide fresh fruits and vegetables
- Providing more local, seasonal, and pesticide-free fruits and vegetables

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<sup>1</sup> The ELPC works on a variety of local, national, and international projects covering the spectrum of environmental law and policy issues under the direction of Wendy B. Jacobs, a Clinical Professor at Harvard Law School and Director of the ELPC. These comments are authored by Nicole Pepperl, an active member of the Clinic and student at Harvard Law School, and Wendy Jacobs.

- Determining Environmental Justice impacts of cumulative pesticide exposure
- Working with NOAA to support consumption of domestic seafood
- Planning for agricultural emergencies and agro-terrorism
- Analyzing the health and environmental costs of meat consumption
- Ensuring that participating farms comply with federal farmworker protections
- Affirmatively supporting sustainable commodities

**I. INTRODUCTION: ACHIEVING STATUTORY COMPLIANCE AND EXPRESS GOVERNMENTAL POLICY GOALS**

Under Executive Order 12866,<sup>2</sup> agencies must consider regulatory impacts on health, safety, environment, well-being, and economic growth and must analyze proposed rules in terms of these broad social costs and benefits. The proposed rule does not adequately perform this required analysis; nor does the proposed rule comply fully with applicable statutes and express government policies that protect children’s health. Implementation of ELPC’s suggestions for changing the proposed nutrition standards would achieve compliance with Executive Order 12866 and the two primary goals of the Richard B. Russell National School Lunch Act (“Act”) while also generating overall social benefits relative to social harms. As the Act’s Congressional Declaration of Policy states (emphasis added):

It is declared to be the policy of Congress, as a measure of national security, to *safeguard the health and well-being of the Nation’s children* and to *encourage the domestic consumption of nutritious agricultural commodities* and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.<sup>3</sup>

Our comments focus first on protecting children’s health, a vital goal of the Act and proposed rule, since “[i]n light of the changes in nutrition science and current dietary concerns, USDA is

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<sup>2</sup> Discussed in the proposed rule beginning at 76 Fed Reg p. 2507.

<sup>3</sup> 42 U.S.C. § 1751.

seeking significant improvements in the NSLP and SBP to ensure that these programs continue to meet their goal to safeguard the health of school children.”<sup>4</sup> The second focus of ELPC’s comments—supporting nutritious commodities—though not explicitly discussed in the proposed rule, follows naturally from the Act and also supports the USDA’s proposed increase in school children’s consumption of fruits, vegetables, and whole grains.

ELPC’s comments are divided into three sections, one addressing each of the Act’s explicit policy goals, and a final section linking nutrition policy to other important governmental policies. The first section focuses on safeguarding health and well-being by ensuring that students who do not eat certain kinds of meat or dairy products for religious, ethical, health, or taste reasons have equal access to healthy school lunches. The second section addresses how the USDA can use commodity programs serving NSLP to promote *nutritious* agricultural commodities within a larger agricultural subsidy structure that primarily subsidizes less nutritious options. The final section discusses social costs and benefits created by the proposed rule—particularly those associated with meat production—that USDA should study as it works to adopt nutritionally-sound and socially-beneficial guidelines.

While considering changes to the National School Lunch and School Breakfast Programs, the USDA should also analyze and reconsider the nexus between health and U.S. agricultural practices. Congress adopted the National School Lunch Program in 1946 when policy-makers who saw poor children going hungry and farmers unable to sell their crops recognized a way to address both problems with a single solution.<sup>5</sup> A similar situation is happening today. Although most children receive plenty of calories, they often lack for nutritious food such as fresh fruits

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<sup>4</sup> 76 Fed. Reg. 2494-2570 (2010), p. 2496.

<sup>5</sup> Clint G Salisbury. “Make an Investment in our School Children: Increase the Nutritional Value of School Lunch Programs.” *BYU Education and Law Journal*. 2004; 331-352, p. 333.

and vegetables.<sup>6</sup> Farm Bill subsidies have created an agricultural system that conflicts with children's nutritional needs because current policies provide far fewer subsidies for fruits and vegetables than for other crops: in 2009, commodity crops (primarily corn, wheat, rice, cotton, and soybeans) received 16 times more subsidies than specialty crops (which includes all fruits and vegetables).<sup>7</sup>

Changes to the nutrition standards are an important way to support healthy children *and* healthy agriculture. The USDA is rightfully concerned with increasing schoolchildren's intake of fresh fruits and vegetables to promote health, but the proposed regulations should acknowledge that this change can also serve to support nutritious agricultural commodities. Nutrition and procurement programs such as NSLP already provide the majority of governmental support for fruits and vegetables,<sup>8</sup> but USDA can do more to explicitly identify this support and its costs and benefits as part of the Regulatory Impact Analysis. The National School Lunch and School Breakfast Programs are not just a way to ensure school children's nutrition; these programs demonstrate and significantly impact the relationship between health and agricultural practices. By understanding and explicitly addressing these impacts, USDA can improve not only the health of school children, but the health of the entire nation.

## **II. ENSURING EQUAL ACCESS TO SCHOOL LUNCHES**

Supporting the health and well-being of the nation's school children depends on serving healthy food that students will actually eat. To meet this goal, USDA must consider the special dietary needs of students who do not eat meat or certain kinds of meat or dairy products for

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<sup>6</sup> Beaulac J, Kristjansson E, and Cummins S. "A Systematic Review of Food Deserts, 1966-2007." *Preventing Chronic Disease*. 2009; 6(3): 1-10. [http://www.cdc.gov/pcd/issues/2009/jul/08\\_0163.htm](http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm).

<sup>7</sup> Hamerschlag, Kari. "Farm Subsidies in California: Skewed Priorities and Gross Inequities." Environmental Working Group Report 2010; 1-7, p. 5. Available at <http://farm.ewg.org/pdf/california-farm.pdf>

<sup>8</sup> *Ibid*, p. 6.

religious, moral, or ethical reasons. USDA can accommodate the needs of these students and promote the health of all students by changing the proposed regulations to mandate a daily vegetarian option available to all students and requiring labels for all vegetarian and vegan meal options to assist school children in choosing healthy meal options. In addition, USDA should increase meal planning flexibility—and reduce schools costs—by replacing the “Meat / Meat Alternate” meal component requirement with a daily or weekly protein requirement.

**A. USDA Should Conduct a Civil Rights Impact Analysis to Identify Disparate Impacts Affecting Program Participants on the Basis of Religion**

After reviewing the proposed rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” USDA concluded that “this proposed rule is not expected to affect the participation of protected individuals in the NSLP and SBP” on the basis of “age, race, color, national origin, sex or disability.”<sup>9</sup> However, USDA failed to consider disparate impacts based on religion or religious beliefs. Under 7 C.F.R. § 15d.2(a), agencies in the Department of Agriculture may not “exclude from participation in, deny the benefits of, or subject to discrimination” any program participants “on the ground of...religion.” All agency actions, such as this proposed rule, fall within the ambit of 7 C.F.R. § 15d and must be non-discriminatory on the basis of religion.<sup>10</sup> Therefore, religion is one of the protected bases that USDA must consider for the purposes of a Civil Rights Impact Analysis. There is no *de minimis* exception for rules that impact only a small number of children—USDA has to conduct the analysis if any children are unable to equally enjoy school lunches due to their religious beliefs.

Under the procedural framework laid out in USDA Regulation 4300-4, USDA must identify the appropriate theories of discrimination, determine the level of civil rights impacts,

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<sup>9</sup> 76 Fed. Reg. at p. 2509.

<sup>10</sup> Private religious schools that participate in NSLP are allowed to treat students differently based on religion under 7 C.F.R. § 16, but those regulations are not the correct standard for an agency rule-making.

and consider alternate policies to mitigate those impacts. USDA should consider the disparate impact school lunch requirements have on students who belong to religions with special dietary requirements, such as Buddhism, Hinduism, Islam, Jainism, Jehovah's Witnesses, Judaism, Seventh Day Adventism, and Sikhism. Although the proposed rule encourages schools to "consider ethnic and religious preferences when planning and preparing meals," it improperly fails to require schools to actually meet those preferences.<sup>11</sup> Failure to require schools to provide religiously-allowable food prevents devout students from participating in and benefiting from the National School Lunch Program, creating religious discrimination in violation of 7 C.F.R. § 15d.2(a). Assuming the number of children belonging to these religions is similar to the number of adult adherents, almost 5% of children follow religions with special dietary requirements,<sup>12</sup> equivalent to 1.5 million children out of the 30 million who participate in NSLP.

USDA should also consider the issue of religious dietary needs because a failure to offer religiously-appropriate food in a Federally-funded program raises concerns under the Religious Freedom Restoration Act of 1993, which prevents Federal programs from burdening religious beliefs.<sup>13</sup> Although the nutritional standards at first glance appear to be facially neutral toward religion, on closer scrutiny they create burdens for religions with dietary restrictions. USDA has an interest in a simple administrative procedure for the NSLP, but it should consider standards that are less restrictive on children with certain religious dietary practices because no child should have to choose between going hungry and following his or her religion.

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<sup>11</sup> 7 C.F.R. § 210.10(g)(3).

<sup>12</sup> Religious identification among U.S. adults: Buddhists (0.7%), Hindus (0.4%), Jehovah's Witnesses (0.7%), Jewish (1.7%), Muslims (0.6%), and Seventh Day Adventists (0.5%). Other world religions, which include both Sikhism and Jainism, account for less than 0.3% of the adult population. Pew Forum on Religion & Public Life. "U.S. Religious Landscape Survey." 2008. <http://religions.pewforum.org/pdf/affiliations-all-traditions.pdf>.

<sup>13</sup> 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4.

**B. Religious Dietary Laws Primarily Focus on Meat, so USDA Should Require a Daily Vegetarian Option to Address these Religious Dietary Needs**

In conducting its Civil Rights Impact Analysis, USDA should consider, among others, the following religious dietary restrictions: vegetarianism (Buddhism, Hinduism, Sikhism), veganism (Hinduism, Jainism), pork prohibitions (Hinduism, Islam, Judaism, Seventh Day Adventism), seafood prohibitions (Judaism, Seventh Day Adventism), beef prohibitions (Hinduism), bans on food containing blood or blood products (Jehovah's Witnesses), kosher food preparation requirements (Judaism), and halal food preparation requirements (Islam).<sup>14</sup> Since many religious dietary requirements ban certain meats or require special meat preparation, NSLP could readily serve the needs of these children by offering a daily vegetarian option.

A required daily vegetarian option for breakfast and lunch would mitigate the disparate impact of the nutrition standards on different religious groups and also serve the needs of children who do not eat meat for ethical, moral, or health reasons. A 2010 Harris poll conducted for the Vegetarian Resource Group found that 4% of children ages 8-12 and 3% between the ages of 12 and 18 say they never eat meat, poultry, or seafood.<sup>15</sup> These numbers represent nearly 1 million children out of the 30 million children who eat school lunches every day. Around 1% of total youth respondents said they did not eat eggs or dairy,<sup>16</sup> so USDA should also consider requiring schools to serve a vegan option upon a student or parent's request. ELPC is not suggesting a required vegan option for all children because of the lack of research demonstrating the safety of vegan diets,<sup>17</sup> but an opt-in vegan option would improve the nutrition of children

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<sup>14</sup> Kat Kinsman. "Clarified: Religious dietary restrictions." CNN. July 20, 2010. Available at <http://eatocracy.cnn.com/2010/07/20/clarified-religious-dietary-restrictions/>

<sup>15</sup> Charles Stahler. "How Many Youth Are Vegetarian?" Vegetarian Resource Group. 2010. Available at [http://www.vrg.org/press/youth\\_poll\\_2010.php](http://www.vrg.org/press/youth_poll_2010.php)

<sup>16</sup> Ibid.

<sup>17</sup> Winston J. Craig. "Health effects of vegan diets." *Am Journal of Clinical Nutrition*. 2009; 89(5): 16275-16335.

who are vegan for religious or ethical reasons by ensuring they receive food they will actually eat and not just throw away. The primary goal of the NSLP is to safeguard the health of children; the current and proposed standards fail in that goal because they do not serve the needs of children who do not eat meat or other animal products.

### **C. Daily Vegetarian Options Would Provide All Children with Helpful Education on How to Create a Nutritionally-Balanced Diet**

The 2005 Dietary Guidelines advise that “[v]egetarians of all types can achieve recommended nutrient intakes through careful selection of foods”<sup>18</sup> and the American Dietetic Association agrees that appropriately planned vegan and vegetarian diets can satisfy the nutritional needs of infants and children.<sup>19</sup> School lunches are an excellent way to teach children how to consume their recommended level of nutrients through a vegetarian diet and to make sure vegetarian children and adolescents are consuming all of the nutrients necessary to their health. Nutrition guidelines work best when they teach children how to recognize healthy meals because then children are prepared to identify healthy options outside of the school setting as well.

In addition to educating children about healthy vegetarian diets, providing a daily vegetarian option can also lead to better health outcomes. Studies show that vegetarian children and adolescents have a healthier diet than their nonvegetarian counterparts because they consume less cholesterol, saturated fat, and total fat and consume more fruits, vegetables, and fiber.<sup>20</sup> However, vegetarian diets often lack important nutrients and children need to be educated about how to eat balanced vegetarian diets.<sup>21</sup> These are all goals supported—but not accomplished—by

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<sup>18</sup> U.S. Department of Agriculture. “Dietary Guidelines for Americans, 2005.” p. 9.

<sup>19</sup> “Position of the American Dietetic Association: Vegetarian Diets.” *Journal of the American Dietetic Association*. 2009; 109:1266-1282.

<sup>20</sup> Laurie Dunham and Linda M. Kollar. “Vegetarian Eating for Children and Adolescents.” *Journal of Pediatric Health Care*. 2006; 20(1):27-34.

<sup>21</sup> *Ibid.*

the proposed regulation and the 2005 Dietary Guidelines. In addition, the 2010 Dietary Guidelines reports that studies of adults associate vegetarian-style eating patterns with improved health outcomes,<sup>22</sup> so a daily vegetarian option can put children on a path toward healthy vegetarian eating as adults.

**D. The Lack of Vegetarian Options Creates Risk of Malnutrition, Particularly for Vegetarian and Religious Children Receiving Free or Reduced-Price Lunches**

The current lack of a required daily vegetarian option puts vegetarian children and children who observe religions that prohibit meat or require special handling of meat who rely on free or reduced-price lunches at risk because of the limited choices for non-meat protein. The proposed regulations list only four specific meat alternates for lunch: enriched macaroni, nuts/seeds, yogurt, and legumes.<sup>23</sup> Vegetarian children would be hard pressed to get all of their protein from any of those sources alone and a child from a low-income family may have no other choices for lunch. The regulations would better serve all children by specifically incorporating and listing the wide variety of vegetarian protein currently available, particularly whole grains such as wheat bran, wheat germ, wheat berries, amaranth, buckwheat, millet, quinoa, and spelt.<sup>24</sup> Pseudocereals such as amaranth, buckwheat and quinoa contain higher protein levels than wheat and provide the additional advantage of being gluten-free.<sup>25</sup>

Whole grains are a significant source of protein, so it makes little conceptual sense to have a separate meat category, instead of a simple protein requirement that can be met with meat

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<sup>22</sup> U.S. Department of Agriculture. “Dietary Guidelines for Americans, 2010.” p. 45.

<sup>23</sup> 7 C.F.R. § 210.10(c)(2)(i) lists enriched macaroni, nuts/seeds, and yogurt. 7 C.F.R. Appendix A to Part 210 describes a process for crediting Alternate Protein Products, but does not list specific products.

<sup>24</sup> Little data is available on consumption of these whole grains in the U.S., but they are an alternative to refined grains. Judy Putnam, Jane Allshouse, and Linda Scott Kantor. “U.S. Per Capita Food Supply Trends: More Calories, Refined Carbohydrates, and Fats.” USDA Economic Research Service. *Food Review*. 2002; 25(3): 1-15, p.4.

<sup>25</sup> Alvarez-Jubete L, Arendt EK, and Gallagher E. “Nutritive value and chemical composition of pseudocereals as gluten-free ingredients.” *International Journal of Food Sciences and Nutrition*. 2009; 60 Suppl 4:240-57.

and non-meat protein sources. Furthermore, labeling the component as “Meat / Meat Alternates” encourages schools to think of the component as something similar to a meat dish, instead of recognizing the wide variety of possible protein sources. The “Meat / Meat Alternates” component emphasizes foods that some children do not eat, instead of focusing on the nutritional components that all children need from their food. USDA could improve this requirement by listing more meat alternates in the regulations, such as the ones described above, but the better option would be to provide more nutritional flexibility by removing the “Meat / Meat Alternates” category altogether and replacing it with a daily or weekly protein requirement. If schools already have to keep track of fat and sodium intake, it would be easy to use nutritional labels to also calculate grams of protein.

At a minimum, USDA should provide more guidance to schools on how to prepare creditable vegetarian meals and require schools to label any vegetarian or vegan options. For nutritional reasons, schools cannot serve the same dish, just without meat: they need to provide students with an alternate protein source. USDA defines Alternate Protein Products in 7 C.F.R. Appendix A to Part 210, but the definition is complicated, making it far easier for schools to stick to serving meat. USDA is in a better position than schools to identify creditable high-protein products, include them by name in the regulations, and provide them through USDA Foods. Given the need for more whole grains in children’s diets<sup>26</sup> and a recommended increase in protein,<sup>27</sup> USDA should promote children’s nutrition by helping schools identify high-protein whole grains and allowing them to use these foods to meet the protein requirement.

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<sup>26</sup> “To align the meals served under the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) with the 2005 Dietary Guidelines, this proposed rule would require schools to offer more fruits, vegetables and whole grains.” 76 Fed Reg at p. 2494.

<sup>27</sup> “[T]he nutrient targets identified by IOM are higher for protein.” 76 Fed Reg at p. 2497.

### **E. Increasing Food Options and School Flexibility Improves Nutrition, so USDA Should Credit Non-Dairy Milk and Adopt a Protein Requirement**

Even the healthiest meal has no impact if it is simply thrown away. Children's preferences play a strong role in what they choose to eat,<sup>28</sup> so schools should have flexibility to offer a greater variety of healthy options, particularly in terms of the meat and dairy requirements. This flexibility can be achieved by changing the meat requirement into a daily or weekly protein requirement and reimbursing schools for non-dairy milk, such as soy milk. Flexibility in these areas will help schools that want to prepare culturally-appropriate dishes for students from cultures that consume less meat or less dairy.

To increase school flexibility, USDA should no longer require that reimbursable "Meat / Meat Alternates" be offered in the main dish or as part of the main dish. Given the shift in focus to fruits, vegetables, and whole grains, there is no nutritional reason school lunches have to be centered around a meat dish, and there are too few defined non-meat alternatives to make them a consistent option. Furthermore, if USDA does require a daily vegetarian option, it will be much easier for schools to implement this option if they are allowed to serve meat as a side dish that can be easily added or removed from meals (such as serving tacos or fajitas with a variety of vegetarian and meat options for fillings). Whole grains provide an excellent source of protein, nutrients, and fiber,<sup>29</sup> so an increase in whole grains will also increase protein servings, reducing the nutritional need for protein from meat dishes.

The current requirements already allow schools to serve non-dairy milk to children after a written request from a medical authority or parent,<sup>30</sup> but the rules should be expanded to allow

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<sup>28</sup> Suzanne Domel Baxter and William O. Thompson. "Fourth-Grade Children's Consumption of Fruit and Vegetable Items Available as Part of School Lunches Is Closely Related to Preferences." *Journal of Nutrition Education and Behavior*. 2002; 34:166-171.

<sup>29</sup> Joanne Slavin. "Whole grains and human health." *Nutrition Research Reviews*. 2004; 17: 99-110.

<sup>30</sup> 7 C.F.R. § 210.10(m)(2)(ii)(B) and 76 Fed Reg at p. 2557.

schools to serve calcium-rich low-fat non-dairy milk to any student. Parents (particularly those for whom English is a second language) may not know that substitutions are possible and may be unwilling or unable to go through the process of making a written request. The formal request process causes unnecessary paperwork for schools and will likely create even more paperwork in the near future as schools become more racially diverse, since lactose intolerance is highly prevalent among black, Latino, Asian, and American Indian populations.<sup>31</sup> Offering non-dairy alternatives would increase the number of children consuming a healthy, calcium-rich beverage. One study in several elementary schools in Florida found that four weeks after soy milk was added to the dairy selections, nearly one-quarter of students chose soy milk and the total number of students choosing a calcium-rich beverage increased from 79% to 83%.<sup>32</sup> Therefore, providing non-dairy milk options without extra paperwork promotes improved nutrition.

Nutritional interventions in places such as Somerville, Massachusetts (where 60% of students receive free or reduced-price lunches) demonstrate that children will choose healthier options like salads and vegetarian bean dishes when schools improve food presentation and host tasting events to increase student interest.<sup>33</sup> Nor is the success of healthier fare due to giving children no options: students chose the vegetarian bean dish option over the competing traditional entrée (a hot dog) 24% of the time.<sup>34</sup> USDA should help schools replicate the Somerville experience by replacing the “Meat / Meat Alternates” component with a simpler protein requirement and providing more guidance for serving vegetarian dishes.

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<sup>31</sup> Swagerty DL, Walling AD, and Klein RM. “Lactose intolerance.” *American Family Physician*. 2002; 65:1845-50.

<sup>32</sup> Jennifer K. Reilly, Amy J. Lanou, Neal D. Barnard, Kim Seid, and Amber A. Green. “Acceptability of Soymilk as a Calcium-Rich Beverage in Elementary School Children.” *American Dietetic Association*. (2006) 590-593.

<sup>33</sup> Goldberg JP, Collins JJ, Folta SC, McLarney MJ, Kozower C, Kuder J, et al. “Retooling food service for early elementary school students in Somerville, Massachusetts.” *Preventing Chronic Disease*. (2009) 6(3): 1-8.

<sup>34</sup> *Ibid*.

**F. USDA Should Prohibit the Practice of Separate Lines for A La Carte Items to Prevent Identification and Stigmatization of Low-Income Children**

Separate lines for subsidized lunches and à la carte items have in practice created an “overt identification” of children receiving free and subsidized lunches.<sup>35</sup> Overt identification of any child who receives free or reduced-price lunches is prohibited by law<sup>36</sup> and bad for student health because some older students skip lunch instead of facing the social stigma of participating in NSLP.<sup>37</sup> The USDA has the power to set regulations limiting competitive food sales in the cafeteria under 42 U.S.C. § 1779(a) and should use this power to require that schools can only sell à la carte items to students who purchase a subsidized meal. USDA cannot prohibit the sale of competitive foods entirely,<sup>38</sup> but it can set limits on sales to ensure that students eat a complete meal for breakfast and lunch. Most à la carte items are nutrient-poor options like cookies, brownies, candy, and carbonated soda.<sup>39</sup> By discouraging sales of these foods, schools can improve dietary quality because limiting snack availability causes students to eat more fruits and vegetables.<sup>40</sup> Schools may be worried about losing revenue, but a USDA study of 32 schools shows that students will consume healthier options when available and many schools actually increase revenues after making healthier changes.<sup>41</sup>

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<sup>35</sup> Carol Pogash. “Free lunch isn’t cool, so some students go hungry.” *New York Times*. March 1, 2008. Available at <http://www.nytimes.com/2008/03/01/education/01lunch.html>.

<sup>36</sup> 42 U.S.C. § 1758(a)(10).

<sup>37</sup> Karen Stein. “Erasing the Stigma of Subsidized School Meals.” *Journal of the American Dietetic Association*. 2008; 108(12):1980-83.

<sup>38</sup> 42 U.S.C. § 1779(b).

<sup>39</sup> Fox MK, Gordon A, Nogales R, and Wilson A. “Availability and consumption of competitive foods in US public schools.” *Journal of the American Dietetic Association*, 109(2 Supplement 1), S57-S66.

<sup>40</sup> Gonzalez W, Jones SJ, and Frongillo EA. “Restricting snacks in U.S. elementary schools is associated with higher frequency of fruit and vegetable consumption.” *Journal of Nutrition*. 2009; 139(1): 142-144.

<sup>41</sup> U.S. Department of Agriculture, Food and Nutrition Service; U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; and U.S. Department of Education. (2005). “Making It Happen! School Nutrition Success Stories.” FNS-374.

### **III. PROMOTING NUTRITIOUS COMMODITIES**

ELPC's proposed changes to the school lunch nutrition standards serve the USDA's goal of promoting nutritious commodities by increasing requirements for fruits, vegetables, and whole grains. However, these requirements also impose a significant burden on schools because of the high cost of fresh fruits and vegetables, especially given their high cost relative to other, more highly-subsidized commodities. In light of its statutory mandate to support nutritious commodities,<sup>42</sup> USDA should analyze how its NSLP commodity programs can be used to create healthier food environments. In particular, USDA should support more local and organic foods to provide children with fresher produce and reduce their exposure to pesticides. USDA should also work with NOAA to support the burgeoning domestic aquaculture industry.

#### **A. The USDA Should Dedicate Half of NSLP Entitlement and Bonus Funds to Purchasing Fresh, Seasonal, and Local Fruits and Vegetables**

The USDA spends \$1 billion each year on commodities for NSLP.<sup>43</sup> However, these commodities do not consistently achieve a nutritionally-balanced diet. A study of California school districts found that they spent more than 82% of their commodity funds to order meat and dairy items and only 13% of their funds on fruit, fruit juice, vegetables and legumes.<sup>44</sup> Nationally, school districts spent 72% of commodity funds on meat and dairy items.<sup>45</sup> Because the USDA's proposed nutrition standards require more offerings of fresh fruits and vegetables, the USDA should shift its commodity subsidies to support the purchase of more fresh fruit and vegetables in order to achieve the statutory goals of safeguarding health and supporting

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<sup>42</sup> 42 U.S.C. § 1751.

<sup>43</sup> U.S. Department of Agriculture, Food and Nutrition Services. "USDA Commodities in the National School Lunch Program." Alexandria, VA: 2007.

<sup>44</sup> Robert Wood Johnson Foundation. "Impact of Federal Commodity Programs on School Meal Nutrition." Policy Highlight. 2008. <http://www.rwjf.org/pr/product.jsp?id=34381>

<sup>45</sup> Ibid.

nutritious domestic commodities. Ordering more fruits and vegetables will also have the long-term benefit of bringing down costs by encouraging more farmers to grow and sell fresh produce, which is a public health benefit the USDA is required to consider under Executive Order 12866.

Schools currently choose which commodities they want to receive as part of their entitlement funds, but the USDA should set a minimum requirement of using half of funds for fruits and vegetables to make sure schools meet the proposed nutrition standards and to create the type of bulk ordering that reduces costs for all schools. USDA has limited enforcement power to make sure schools meet the nutrition standards, so it should use the commodity order process to ensure schools are actually ordering healthy foods. The Department of Defense Fresh Fruit and Vegetable Program has been highly effective in delivering these nutritious commodities and should be expanded to allow all school districts to participate in the program.<sup>46</sup> USDA should also increase the number of fresh fruits and vegetables available through USDA Foods. Of the 105 commodities available in the fruits and vegetables category, only 14 are varieties of fresh fruits and vegetables—specifically: apples, carrots, grapefruit, lemons, oranges, pears, potatoes and sweet potatoes—the rest are canned (38), frozen (35), dehydrated (8), or otherwise processed.<sup>47</sup> USDA has improved nutrition by limiting the amount of added sugar from syrups, but it is as important, if not more so, to provide children with fresh fruits and vegetables. In particular, USDA should increase support for local and seasonal produce by providing more technical assistance to schools interested in buying produce locally.

In addition to entitlement spending, the USDA should also increase the amount of fresh fruits and vegetables it provides through bonus funds. For example, Section 32 of Public Law 74–

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<sup>46</sup> U.S. Department of Agriculture. “Department of Defense Fresh Fruit and Vegetable Program.” [http://www.fns.usda.gov/fdd/programs/dod/DoD\\_FreshFruitandVegetableProgram.pdf](http://www.fns.usda.gov/fdd/programs/dod/DoD_FreshFruitandVegetableProgram.pdf)

<sup>47</sup> U.S. Department of Agriculture. “NSLP Commodity Fact Sheets: Vegetables/Fruits Single Fact Sheets Listed Numerically.” 2009. [http://www.USDA.usda.gov/fdd/schfacts/allfacts\\_rpts\\_bycode\\_veg-fruits.htm](http://www.USDA.usda.gov/fdd/schfacts/allfacts_rpts_bycode_veg-fruits.htm)

320 appropriates \$200 million annually to the USDA for the purchase of “fruits, vegetables, and other specialty food crops,” of which \$50 million must be spent on “*fresh* fruits and vegetables for distribution to schools and service institutions” (emphasis added).<sup>48</sup> The USDA could choose to spend all of those funds on fresh fruits and vegetables and nothing in the law limits these funds to surplus commodities. The USDA has unnecessarily narrowed the scope of its own authority by defining Section 32 as “authoriz[ing] the Department to purchase nonbasic perishable foods available under surplus-removal operations, for the purpose of encouraging the domestic consumption of such foods by diverting them from the normal channels of trade or commerce.”<sup>49</sup> Instead, USDA should simply define its authority as the ability to purchase fruits, vegetables, and other specialty crops, regardless of surplus status.

**B. Providing Fresh Fruits and Vegetables is Particularly Important for Children Living in Low-Income Neighborhoods Without Access to These Commodities**

NSLP is vital for providing healthy foods to children who receive free and reduced cost lunches because these children are more likely to live in food deserts. Substantial research has demonstrated that certain areas of the country, particularly low-income and minority neighborhoods, lack consistent access to fresh, unprocessed foods like high-quality fresh fruits and vegetables.<sup>50</sup> Unsurprisingly, access to fruits and vegetables is related to obesity in children: one study found that high fruit and vegetable prices were correlated with a rise in BMI between kindergarten and third grade.<sup>51</sup> School lunches can address this disparity by increasing children’s access to fresh fruits and vegetables. Children living in food deserts have easy access to

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<sup>48</sup> 7 U.S.C. § 612c(b)(1).

<sup>49</sup> 7 C.F.R. § 250.3.

<sup>50</sup> Beaulac J, Kristjansson E, and Cummins S. “A Systematic Review of Food Deserts, 1966-2007.” *Preventing Chronic Disease*. 2009; 6(3): 1-10. [http://www.cdc.gov/pcd/issues/2009/jul/08\\_0163.htm](http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm).

<sup>51</sup> Sturm R, and Datar A. “Body mass index in elementary school children, metropolitan area food prices and food outlet density.” *Public Health*. 2005; 119, 1059–1068, p 1066.

processed foods like pizza, fried chicken, and hamburgers, so it is important for USDA to focus on providing these children with the foods they lack—namely fresh fruits and vegetables. The USDA has the power and responsibility to address this manifest injustice.<sup>52</sup>

### **C. USDA Should Provide More Local Fresh Fruits and Vegetables by Expanding the Small Farms/School Meals Initiative**

Since 1997, USDA has brought more local fresh fruits and vegetables into schools through its farm-to-school initiative. Using local produce decreases the chance the produce will be bruised or wilted when it arrives, which in turn makes it more likely that kids will eat and enjoy the fresh fruits and vegetables. Local produce cuts down on transportation costs and schools can take the opportunity to have local farmers come into classrooms to explain how their crops are grown. For city children, visits from farmers may even help them do better on standardized tests.<sup>53</sup> Given the rapidly-aging farm population, it is particularly important to encourage youth interest in agriculture. Linking the school lunch program more directly to farmers also increases program support from an important stakeholder group.

Unfortunately, one of the barriers to producing more fruits and vegetables throughout the country is the Farm Bill requirement that specialty crops cannot be harvested on the base acres of farms receiving direct commodity payments.<sup>54</sup> USDA does not have the power to remove this statutory requirement, but it can reach out with the farm-to-school initiative to farms participating in the pilot project that allows farmers to grow cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn, and tomatoes on 75,000 acres in 7 selected states.<sup>55</sup> Helping

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<sup>52</sup> See, e.g., Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” and USDA Departmental Regulation 5600-2, “Environmental Justice.”

<sup>53</sup> Standardized tests have questions relating to farms, crops, or livestock, so farmer visits can help children prepare. Javier C. Hernandez. “A Moo-Moo Here, and Better Test Scores Later.” *New York Times*. Oct 19, 2009.

<sup>54</sup> 7 U.S.C. § 8717(b).

<sup>55</sup> 7 U.S.C. § 8717(d).

those farmers successfully sell their crops would encourage Congress to allow more farmers to grow fruits and vegetables on their base acres. If strong local markets develop, farmers may even be willing to forgo commodity payments in order to grow specialty crops. Increasing farmers' geographic and crop diversification will help them withstand climate and economic shocks, thus helping to ensure a secure supply of crops for school lunches<sup>56</sup> and creating the types of public health and environmental benefits contemplated by Executive Order 12866.

#### **D. USDA Should Address Pesticide and Growth Hormone Health Impacts**

Pesticide exposure raises serious health concerns for children because of the potential developmental and long-term health effects.<sup>57</sup> Fresh fruits and vegetables are a significant source of pesticide exposure, especially among urban and suburban children who are less exposed to pesticides through their environment.<sup>58</sup> USDA should decrease the risk of pesticide exposure by requiring the purchase of fruits and vegetables produced without pesticides. Although current health research is limited, growth hormones in animal products also pose a potential health risk,<sup>59</sup> which can be addressed by requiring the purchase of products free of such hormones.

High cumulative exposure to pesticides through various sources, such as food, soil and groundwater, raises serious health concerns.<sup>60</sup> In particular, rural children and the children of

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<sup>56</sup> Brenda B. Lin. "Resilience in Agriculture through Crop Diversification: Adaptive Management for Environmental Change." *BioScience*. March 2011; 61(3): 183-193, p. 191.

<sup>57</sup> Eskenazi B, Bradman A, and Castorina R. "Exposures of children to organophosphate pesticides and their potential adverse health effects." *Environmental Health Perspectives*. 1999; 107(Suppl 3): 409-419.

<sup>58</sup> Chensheng Lu, Dana B. Barr, Melanie A. Pearson, and Lance A. Waller, "Dietary Intake and Its Contribution to Longitudinal Organophosphorus Pesticide Exposure in Urban/Suburban Children," *Environmental Health Perspectives*. April 2008; 116(4): 537-542, p. 540.

<sup>59</sup> "Assessment of Potential Risks to Human Health from Hormone Residues in Bovine Meat and Meat Products." European Commission, Scientific Committee on Veterinary Measures Relating to Public Health. 1999.

<sup>60</sup> Elaine A. Cohen Hubal, Linda S. Sheldon, Janet M. Burke, Thomas R. McCurdy, Maurice R. Berry, Marc L. Rigas, Valerie G. Zartarian, and Natalie C.G. Freema. "Children's Exposure Assessment: A Review of Factors Influencing Children's Exposure, and the Data Available to Characterize and Assess That Exposure." *Environmental Health Perspectives*. June 2000; 108(61): 475-486.

migrant farmworkers are exposed to high levels of pesticides in the environment.<sup>61,62</sup> Higher cumulative exposure for poor and minority students raises environmental justice issues, so USDA should examine the cumulative health impacts pursuant to Departmental Regulation 5600-2, Appendix D, “Non-NEPA Environmental Justice Issue Determination Procedure.” This regulation was adopted to implement Executive Order 12898, which declares that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.”<sup>63</sup> USDA cannot safeguard the health of children *and* increase fruit and vegetable consumption without explaining how it will minimize children’s pesticide exposure. Providing fruits and vegetables produced without pesticides is one way to address these concerns. In its regulatory impact analysis, USDA should also consider the reduced environmental costs of such produce and the social benefit of supporting a growing constituency of American farmers who grow crops without pesticides.

**E. Creating Consistent Demand for More Fresh Fruits and Vegetables will Reduce Consumer Costs in the Long-Term**

USDA estimates that school food costs for fruits and vegetables will significantly increase due to the new requirements.<sup>64</sup> High costs to schools is a serious problem and one that the Department of Agriculture can address by ensuring consistent subsidies for fruit and vegetable growers through NSLP commodity funds. USDA should also consider how its other

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<sup>61</sup> Eskenazi B, Bradman A, and Castorina R. “Exposures of children to organophosphate pesticides and their potential adverse health effects.” *Environmental Health Perspectives*. 1999; 107(Suppl 3): 409–419.

<sup>62</sup> Agricultural areas have more pesticides in groundwater. Department of the Interior, U.S. Geological Survey. “Pesticides in the Nation’s Streams and Ground Water, 1992–2001—A Summary.” Fact Sheet 2006–3028. 2006.

<sup>63</sup> Executive Order 12898. “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.”

<sup>64</sup> 76 Fed. Reg at p. 2528

research and subsidy programs can incentivize more fruit and vegetable production. In particular, mechanization of fruit and vegetable harvests promises large labor cost savings, but research is needed to develop harvesting technology for more crops.<sup>65</sup> If more farmers are going to invest the capital costs to switch over to fruits and vegetables, USDA should assure them of a consistent level of demand from NSLP. Walmart's partnership with the Let's Move campaign to offer cheaper fruits and vegetables and more variety of produce demonstrates the power of the private market to bring down costs when buoyed by strong consumer demand and political pressure.<sup>66</sup> Demand and pressure from the USDA could achieve a similar result for lower fruit and vegetable prices on a larger scale.

#### **F. USDA Should Support Sustainable Domestic Aquaculture and Fisheries by Offering More Seafood Choices**

The National School Lunch Act directs the USDA to “give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products)” as part of its commodity programs.<sup>67</sup> Since many meats are high in cholesterol and saturated fat, USDA should support the more nutritious option of domestic seafood (as well as other non-meat, high protein products, such as whole grains). NOAA is currently developing a national policy to support sustainable aquaculture in Federal waters,<sup>68</sup> so USDA should support this domestic aquaculture policy by working with NOAA to provide more domestic seafood in school lunches. USDA should also support sustainable fisheries, such as those certified by the Marine Stewardship Council.

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<sup>65</sup> Wallace E. Huffman. “The Status of Labor-Saving Mechanization in Fruits and Vegetables.” Iowa State University, Department of Economics. Working Paper No. 10017. 2010.

<sup>66</sup> “Walmart joins Michelle Obama's Let's Move! Campaign.” CNN. January 20, 2011.

<sup>67</sup> 42 U.S.C. § 1755 (c)(1)(D).

<sup>68</sup> National Oceanic and Atmospheric Administration. “Draft Aquaculture Policy.” February 2011. <http://www.nmfs.noaa.gov/aquaculture/docs/noaadraftaqpolicy.pdf>

Despite its overall health benefits, seafood presents a health issue for young children due to bio-accumulation of environmental contaminants, such as mercury.<sup>69</sup> Schools can avoid this issue by serving herbivorous fish, such as tilapia and catfish, since mercury bio-accumulates in top predators.<sup>70</sup> Eating herbivorous fish also aids NOAA's goal of encouraging plant-based feeds for farm-raised fish.<sup>71</sup> Developing a sustainable domestic aquaculture industry depends on developing consumer tastes for sustainable domestically-raised fish. School lunches are one way to introduce children to these fish, teaching them how to identify sustainable seafood and how to make it part of their healthy diet.

### **G. USDA Should Design Resilient Commodity Programs to Prepare for Agricultural Emergencies**

Safeguarding children's health also means preparing for emergencies that could disrupt the production and transportation of food to schools. USDA should design its NSLP purchasing and transportation networks to be resilient in the face of natural and human-made disasters, such as floods, droughts, price shocks, pest outbreaks, disease outbreaks, and agro-terrorism ("the deliberate introduction of an animal or plant disease with the goal of generating fear, causing economic losses, and/or undermining stability"<sup>72</sup>). In a world dealing with climate change and rapid globalization, agricultural emergencies seem increasingly likely. USDA can begin this process by working with the recently-created Agricultural Biosecurity Communication Center<sup>73</sup> to prepare plans for agricultural emergencies. As food markets grow increasingly dependent on

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<sup>69</sup> 2005 Dietary Guidelines, p. 31.

<sup>70</sup> Kidd KA, Hesslein RH, Fudge RJP, and Hallard KA. "The influence of trophic level as measured by  $\delta^{15}\text{N}$  on mercury concentrations in freshwater organisms." *Water, Air, and Soil Pollution*. 1995; 80(1-4):1011-15.

<sup>71</sup> Michael B. Rust, Fredric T. Barrows, Ronald W. Hardy, Andrew Lazur, Kate Naughten, and Jeffrey Silverstein. "The Future of Aquafeeds." NOAA/USDA Alternative Feeds Initiative. Nov 2010.

<sup>72</sup> Jim Monke. "Agroterrorism: Threats and Preparedness." CRS Report for Congress. RL32521. August 2004.

<sup>73</sup> The Agricultural Biosecurity Communication Center was created by the 2008 Farm Bill to prepare for agricultural emergencies and is jointly run by USDA and the Department of Homeland Security. 7 U.S.C. § 8912.

only a few varieties of crops, USDA should also prepare for price shocks and disease outbreaks by diversifying the number of crops it relies on for school foods and by encouraging farmers to adopt polyculture farming methods.<sup>74</sup>

Preparing for agricultural emergencies may not seem like an immediate concern for nutritional standards, but Congress itself described the school lunch program “as a measure of national security” because it protects children’s health and domestic agricultural production.<sup>75</sup> If emergency strikes, NLSP should be ready to ensure that school children will maintain consistent access to food. More broadly, USDA should work to develop a resilient U.S. agricultural system in order to permanently safeguard children’s health. Nearly 15% of American families are still food insecure,<sup>76</sup> leaving them at risk of higher prices caused by agricultural problems. Among the greatest current risks are lack of irrigation water, increased energy prices, diversion of farmland to biofuels, and climate change.<sup>77</sup> Children depend on food and food in turn depends on the health of ecological systems. In this manner, supporting healthy ecosystems is necessary for safeguarding children’s health.

#### **IV. BROADENING THE REGULATORY IMPACT ANALYSIS**

As the USDA promulgates new nutrition standards for the National School Lunch and Breakfast Programs, it should fully consider the broad range of societal costs and benefits identified in Executive Order 12866 and identify more ways to support other related

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<sup>74</sup> Brenda B. Lin. “Resilience in Agriculture through Crop Diversification: Adaptive Management for Environmental Change.” *BioScience*. March 2011; 61(3): 183-193.

<sup>75</sup> 42 U.S.C. § 1751.

<sup>76</sup> Mark Nord, Alisha Coleman-Jensen, Margaret Andrews, and Steven Carlson. “Household Food Security in the United States, 2009.” Economic Research Report No. ERR-108. November 2010.

<sup>77</sup> Naylor, R. L. “Managing food production systems for resilience,” Chapter 12 in F. S. Chapin, G. P. Kofinas, and C. Folke (Eds), *Principles of Natural Resource Stewardship: Resilience-Based Management in a Changing World*. New York: Springer, 2009.

governmental objectives as part of its Regulatory Impact Analysis. Because of the close connection between agriculture and the environment, USDA should consider the environmental harms and benefits likely to result from the proposed nutrition standards. In particular, USDA should address the environmental and health costs of meat production and consumption, the health costs of manual farm labor, and after analyzing these costs, support the purchase and consumption of sustainable commodities.

**A. USDA Should More Fully Analyze Costs and Benefits in its Regulatory Impact Analysis, as Required Under Executive Order 12866**

Pursuant to Executive Order 12866, the USDA conducted a Regulatory Impact Analysis estimating the benefits and costs of the proposed school lunch standards.<sup>78</sup> However, this analysis examined only a narrow set of costs and benefits related to the new standards, such as health benefits from reduced obesity and increased costs to schools. The purpose of the benefit-cost analysis, however, is to understand the broader impacts of new regulations. As the very first sentence of Executive Order 12866 explains:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable.

In keeping with this broad purpose, the USDA should expand its Regulatory Impact Analysis to include more costs and benefits, particularly environmental costs. The USDA has a statutory obligation to ensure that nutrition standards comply with the Dietary Guidelines, but there are multiple ways to structure the standards to provide nutritionally-balanced meals while also

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<sup>78</sup> 76 Fed Reg at p. 2507-8.

addressing other public concerns. There are many ways to produce nutritionally-balanced meals and USDA should be using its required regulatory impact analysis to ensure its regulations achieve healthy nutrition *and* social benefits, including healthier agricultural practices.

**B. USDA Should Analyze the Environmental and Health Costs of Meat Production and Commodity Crops Associated with Grain-Fed Meat Production**

The goal of the Regulatory Impact Analysis is to ensure that agencies use their discretion wisely when adopting regulations that create external costs and benefits, but these decisions depend on a comprehensive benefit-cost analysis. For this proposed rule, USDA needs to conduct a more thorough analysis of environmental and health impacts of the proposed nutrition standards, particularly as they relate to meat and associated commodity crops. Meat consumption carries high environmental and health costs, but produces only moderate health benefits as a source of protein and nutrients,<sup>79</sup> so NSLP nutrition standards should require less meat.

The 2005 Dietary Guidelines encourage “[i]ncreased intakes of fruits, vegetables, whole grains, and fat-free or low-fat milk and milk products,” but do not particularly focus on meat consumption, other than as one of many sources of protein and nutrients.<sup>80</sup> The 2010 Dietary Guidelines also recommend choosing from “a variety of protein foods, which include seafood, lean meat and poultry, eggs, beans and peas, soy products, and unsalted nuts and seeds.”<sup>81</sup> In light of these nutritional recommendations, the proposed rule should encourage schools to choose a wider variety of protein sources because of the high environmental and health costs associated with meat production.

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<sup>79</sup> Polly Walker, Pamela Rhubart-Berg, Shawn McKenzie, Kristin Kelling and Robert S Lawrence. “Public health implications of meat production and consumption.” *Public Health Nutrition*. 2005; 8(4), 348–356.

<sup>80</sup> 2005 Dietary Guidelines, p. 23.

<sup>81</sup> 2010 Dietary Guidelines, p. xi.

Most meat in the United States is produced in Concentrated Animal Feeding Operations (“CAFOs”) which pollute air and local water supplies, use large amounts of energy, generate significant greenhouse gases, and require ever-increasing amounts of corn, soybeans, and other feeds.<sup>82</sup> One economic analysis estimated that U.S. livestock production generates annual external costs of \$297.2 million just due to water pollution, greenhouse gas emissions, and fish kills caused by manure spills.<sup>83</sup> Globally, meat production generates 18% of the world’s greenhouse gases,<sup>84</sup> leading to the associated costs of climate change. Furthermore, the impact of grain-fed meat production reaches far beyond the CAFOs’ boundaries because of the environmental costs associated with producing the grain necessary to feed livestock on an industrial scale. Grain production creates environmental costs such as water pollution, nitrogen and pesticide run-off, soil erosion, damage to wildlife and habitat destruction.<sup>85</sup>

Meat production also poses serious human health risks because of water contamination<sup>86</sup> and overuse of antibiotics as growth promoters, leading to more resistant microorganisms.<sup>87</sup> According to the FDA, 28.8 million pounds of antibiotics in the U.S. are used in livestock production,<sup>88</sup> compared to 7 million pounds for human medical use.<sup>89</sup> Nor is consumption of

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<sup>82</sup> Doug Gurian-Sherman. “CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations.” Union of Concerned Scientists. 2008. [http://www.ucsusa.org/assets/documents/food\\_and\\_agriculture/cafos-uncovered.pdf](http://www.ucsusa.org/assets/documents/food_and_agriculture/cafos-uncovered.pdf)

<sup>83</sup> Erin M Tegtmeier and Michael Duffy. “External Costs of Agricultural Production in the United States.” *International Journal of Agricultural Sustainability*. 2004; 2(1): 1-20.

<sup>84</sup> Henning Steinfeld, Pierre Gerber, Tom Wassenaar, Vincent Castel, Mauricio Rosales, and Cees de Haan. “Livestock’s Long Shadow: Environmental Issues and Options.” U.N. Food and Agriculture Organization. 2006.

<sup>85</sup> *Ibid.*, p. 4.

<sup>86</sup> JoAnn Burkholder, Bob Libra, Peter Weyer, Susan Heathcote, Dana Kolpin, Peter S. Thorne, and Michael Wichman. “Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality.” *Environmental Health Perspectives*. 2007; 115(2): 308–312. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817674/>

<sup>87</sup> Mary J. Gilchrist, Christina Greko, David B. Wallinga, George W. Beran, David G. Riley, and Peter S. Thorne. “The Potential Role of Concentrated Animal Feeding Operations in Infectious Disease Epidemics and Antibiotic Resistance.” *Environmental Health Perspectives*. 2007; 115(2): 313–316.

<sup>88</sup> Food and Drug Administration. “2009 Summary Report on Antimicrobials Sold or Distributed for Use in Food-Producing Animals.” Department of Health and Human Services. 2009.

meat necessary for good nutrition—in fact, meat produces many negative health consequences because it contributes most of the cholesterol and saturated fat in the typical American diet.<sup>90</sup> In light of the adverse health impacts of high meat consumption and the high cost of its production, USDA Foods should reduce the amount of meat it provides to schools, USDA should remove the “Meat / Meat Alternates” requirement, and the proposed nutrition standards should be changed to emphasize other high-protein foods.

**C. USDA Should Ensure Commodities for School Lunches are Produced at Farms that Comply with Federal Farmworker Protections**

Many fruits and vegetables still require hand-picking because they cannot be harvested by machine.<sup>91</sup> By creating a new and large demand for fruits and vegetables, the proposed nutrition standards offer a meaningful opportunity to improve the working conditions of farm laborers and decrease their unhealthy environmental exposure to pesticides. In particular, USDA should consider how its commodities program can be implemented to ensure fruits and vegetables are produced at farms that follow the rules created by the Migrant and Seasonal Agricultural Worker Protection Act<sup>92</sup> and EPA’s Worker Protection Standard.<sup>93</sup> For example, USDA should require proof of compliance before purchasing produce from these farms or set up a network of designated-compliant farms. Farmworkers require federal protection because of the highly dangerous nature of farm jobs: an estimated 300,000 farmworkers suffer pesticide

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<sup>89</sup> Ralph Loglisci. “New FDA Numbers Reveal Food Animals Consume Lion’s Share of Antibiotics.” Center for a Livable Future Blog. December 23, 2010.

<sup>90</sup> Walker et al., *supra* note 79, p. 349.

<sup>91</sup> Oliveira V, Effland J, Runyan, and Hamm S. “Hired Farm Labor Use on Fruit, Vegetable, and Horticultural Specialty Farms.” Washington, DC: U.S. Department of Agriculture, 1993.

<sup>92</sup> 29 U.S.C. § 1801 et seq.

<sup>93</sup> 40 C.F.R. § 170.

poisoning annually.<sup>94</sup> Protecting farmworkers, particularly migrant farmworkers, from illegal working conditions will also improve living conditions for their school-age children and helping these children is a national policy. The Migrant Education Program dedicates federal funds to aid this particularly vulnerable group of school children. As USDA increases the number of fruits and vegetables served as part of school lunches it needs to consider the human health costs of farm labor, such as pesticide exposure and repetitive labor. USDA can decrease these costs by purchasing more fruits and vegetables produced without pesticides and ensuring that farms are following the law when it comes to protecting farmworkers' safety.

**D. USDA Should Analyze the Environmental and Health Impact of Various Commodities and Encourage Schools to Use those with the Smallest Impact**

The National School Lunch and Breakfast Programs are one of the single largest consumers of agricultural commodities in the United States,<sup>95</sup> so a change in these requirements will affect a broad swath of American agriculture due to shifting demand for certain crops. By conducting a broad benefit-cost analysis of many types of commodities, USDA can encourage schools to choose healthy commodities with low social costs in terms of environmental and health impacts. For example, some grain-fed animals have a much lower environmental impact because they use feed more efficiently. Cattle need 7 kg of grain to produce 1 kg of beef, whereas pigs need 4 kg of grain to produce 1 kg of pork, and chicken need only 2 kg of grain to produce 1 kg of poultry.<sup>96</sup> Herbivorous farm-raised fish can be produced even more efficiently

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<sup>94</sup> Don Villarejo. "The Occupational Health Status of Hired Farm Workers." Davis, CA: California Institute for Rural Studies, 1999.

<sup>95</sup> In 2007, the United States produced a total of nearly \$300 billion dollars worth of agricultural products. USDA 2007 Census of Agriculture. That year, USDA spent \$9 billion on commodities and cash reimbursements for NSLP. Food Research and Action Center. "Commodity Foods and the Nutritional Quality of the School Lunch Program: Historical Role, Current Operations, and Future Potential." Washington, DC: 2007.

<sup>96</sup> *Ibid.*, p. 351.

than poultry.<sup>97</sup> Schools can therefore reduce their environmental impact without harming nutrition by preferring chicken and fish to beef and pork and by eating less meat overall.

Pesticide-free, seasonal, and local crops also offer environmental benefits in the form of reduced pesticide use, lower energy costs, and decreases in transportation impacts.<sup>98</sup> These environmental benefits are matched by health benefits of decreased pesticide exposure and cost benefits from lower transportation costs. Serving more vegetarian meals is one of the best environmental choices schools can make since these meals require less energy, land, and water resources.<sup>99</sup> Broad cost-benefit analyses provide very useful information for schools because they can help them identify these types of win-win situations. When nutritional values are equal, USDA should affirmatively support sustainable commodities.

#### **E. Governmental Policy Calls for Promoting Sustainable Commodities**

Executive Order 13514 directs Federal agencies to “leverage agency acquisitions to foster markets for sustainable technologies and environmentally preferable materials, products, and services” to support a general goal of governmental sustainability.<sup>100</sup> The Health and Sustainability Guidelines for Federal Concessions and Vending Operations demonstrate how food programs similar to school lunches can promote health *and* sustainability through their purchase decisions. USDA is particularly well-situated to support sustainable agriculture because it has leverage through its commodity purchases (such as USDA Foods) and through its agricultural research and educational programs.

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<sup>97</sup> Rosamond L. Naylor, Rebecca J. Goldberg, Jurgenne H. Primavera, Nils Kautsky, et al. “Effect of aquaculture on world fish supplies.” *Nature*. 2002; 405: 1017-1024.

<sup>98</sup> David Pimentel and Marcia Pimentel. “Sustainability of meat-based and plant-based diets and the environment.” *American Journal of Clinical Nutrition*. 2003; 78(suppl): 660S–663S.

<sup>99</sup> *Ibid.*

<sup>100</sup> Executive Order 13514. “Federal Leadership in Environmental, Energy, and Economic Performance.”

Understanding and mitigating the environmental impacts of Federal actions has long been part of national policy through the National Environmental Policy Act (“NEPA”). USDA regulations categorically exclude the Food and Nutrition Service<sup>101</sup> from having to conduct NEPA assessments under 7 C.F.R. § 1b.4, unless the agency head “determines that an action may have a significant environmental effect.” The agency head should make that determination in this case and conduct an environmental assessment because of the major environmental impacts of the NSLP nutrition standards and commodity programs, as discussed above.

#### **F. Addressing the Health Costs of Obesity Requires Fixing the Factors that Create Unhealthy Food Environments**

A growing body of evidence suggests that interventions to deal with obesity must focus on changing the overall food environment, instead of fixating solely on individual food choices.<sup>102</sup> The food environment strategy recognizes that energy-dense foods are rational economic purchases for many low-income families, so the simplest way to fix the system is to lower the costs of fruits and vegetables relative to other foods.<sup>103</sup> For example, WIC participants given a weekly \$10 voucher for fruits and vegetables increased their fruit and vegetable intake by about 2 servings for day, compared to no change in those simply advised to eat more produce.<sup>104</sup> Nor is cost the only barrier to healthy diets. The current U.S. supply of fruits and vegetables (both domestic and imported) provides less than *half* of the number of servings

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<sup>101</sup> FNS is listed by its old name “Food and Consumer Service” in the regulations.

<sup>102</sup> Steven Cummins and Sally Macintyre. “Food environments and obesity—neighbourhood or nation?” *International Journal of Epidemiology*. 2006; 35:100–104.

<sup>103</sup> Adam Drewnowski and Nicole Darmon. “Food Choices and Diet Costs: an Economic Analysis.” *Journal of Nutrition*. 2005; 135:900-904.

<sup>104</sup> Dena R. Herman, Gail G. Harrison, Abdelmonem A. Afifi and Eloise Jenks. “Effect of a Targeted Subsidy on Intake of Fruits and Vegetables Among Low-Income Women in the Special Supplemental Nutrition Program for Women, Infants, and Children.” *American Journal of Public Health*. January 2008, 98(1): 98-105.

recommended under the 2005 Dietary Guidelines.<sup>105</sup> The relationship between obesity and agricultural subsidies is complex and contested,<sup>106</sup> but it is clear the U.S. subsidizes fruits and vegetables far less than other crops.

Fortunately, USDA has the power to support nutritious commodities and improve the nation's food environment by using its power to determine school lunch standards to increase the overall national supply of fruits, vegetables, and whole grains. USDA has significant influence over food manufacturers because this proposed rule determines what 30 million children eat for lunch every day. USDA should not shy away from using this power to directly encourage food manufacturers to offer healthier products. Market competition among food manufacturers can increase the supply of healthy food products, such as whole grain products, in turn leading more consumers to buy those products.<sup>107</sup> Improving nutrition in schools is an important step in addressing childhood obesity, but changes to the NSLP should also be considered in light of their impact on the food environment beyond the schoolhouse gates. For children living in food deserts, school breakfasts and lunches may be their only access to high-quality fruits and vegetables. The childhood obesity epidemic requires more than half-solutions, and as USDA considers public comments on the proposed nutrition standards, it should take a step back to directly consider how this rule can improve children's overall food environment.

## **V. CONCLUSION: HEALTHY CHILDREN NEED HEALTHY AGRICULTURE**

The National School Lunch and School Breakfast Programs are powerful tools for promoting children's health and supporting nutritious agricultural commodities. Unfortunately,

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<sup>105</sup> Susan M. Krebs-Smith, Jill Reedy and Claire Bosire. "Healthfulness of the U.S. Food Supply: Little Improvement Despite Decades of Dietary Guidance." *Am Journal of Preventive Medicine*. 2010; 38(5):472-477

<sup>106</sup> Scott Fields. "The Fat of the Land: Do Agricultural Subsidies Foster Poor Health?" *Environmental Health Perspectives*. 2004 October; 112(14): A820-A823.

<sup>107</sup> Lisa Mancino, Fred Kuchler, and Ephraim Leibtag. "Getting consumers to eat more whole-grains: The role of policy, information, and food manufacturers." *Food Policy*. 2008; 33(6): 489-496.

the proposed nutrition standards fall short of meeting all applicable statutory requirements and Executive Orders. As drafted, the proposed rule does not do enough to facilitate children's access to fresh, pesticide-free fruits and vegetables. Congress created NSLP to address both nutritional and agricultural issues in school. To do this, USDA needs to provide significant financial and other support for fruits, vegetables, and whole grains. Just as importantly, the USDA needs to match its support for nutritious commodities with support for sustainable agriculture. After all, there is a reason the Department of Agriculture oversees NSLP—because children's nutrition depends on healthy agricultural practices, resilient crop systems, and strong ecosystems.

Children's health is a growing concern because of overall shifts in the food environment and it will take more than just school lunches to change this disturbing trend. The proposed rule discusses over-consumption of calories, fat, and processed food, but it should also address children's exposure to pesticides, the health needs of vegetarian children, and the limited availability of fresh fruits and vegetables in low-income neighborhoods. USDA has the mandate to write nutritional standards that promote healthier food environments for the nation's school children and it can effectively meet that mandate by adopting ELPC's recommendations and proposed changes.

Respectfully submitted,



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