



Association for Career and Technical Education
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September 11, 2015

The Honorable Pat Roberts
Chairman
Committee on Agriculture, Nutrition
and Forestry
U.S. Senate
Washington, D.C. 20510

The Honorable Debbie Stabenow
Ranking Member
Committee on Agriculture, Nutrition
and Forestry
U.S. Senate
Washington, D.C. 20510

Dear Chairman Roberts and Ranking Member Stabenow,

On behalf of the Association for Career and Technical Education (ACTE), a national organization representing teachers, administrators and counselors in the field of career and technical education (CTE), I am writing in regard to the Smart Snacks nutrition standards authorized under the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). These nutritional standards apply specifically to “competitive foods,” which include any foods sold to students in school that are outside the federally reimbursed school meal programs. Though intended to target snack foods sold in vending machines, a la carte lines and school stores, these regulations have impacted many CTE culinary programs that operate school-based enterprises as part of the curriculum, including student-run cafés, restaurants, bakeries and catering businesses. These learning labs provide students with opportunities to develop their entrepreneurial and culinary skills, while gaining practical experiences for a future career in the hospitality and food service industries.

ACTE previously provided comments on the proposed rule and interim final rule issued by the U.S. Department of Agriculture (USDA). We have repeatedly expressed frustration with the lack of clear guidance and inappropriate expectations for CTE programs. As Congress considers reauthorization of child nutrition programs this fall, we urge the committee to address these concerns immediately to prevent any further undue burden on CTE educators, administrators and students.

The interim final rule, published in the Federal Register on Friday, June 28, 2013, speaks directly to the potential negative effects for CTE programs. It says, “Students are preparing to enter the workforce where the nutritional standards and requirements may vary widely from those required under the National School Lunch Program (NSLP) and School Breakfast Program (SBP). Applying the nutrition standards for competitive foods to these programs may limit the skill development necessary for careers in the food industry.” The rule also acknowledges the potential conflict with existing statute, specifically section 12(c) of the National School Lunch Act (NSLA) and section 11(a) of the Child Nutrition Act (CNA) which state, “The secretary shall

not impose any requirement with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction in any school.” As a result, USDA proposed to provide waivers for CTE programs where appropriate. The interim final rule says, “In recognition of the potential conflict of legislative intent, the department is willing to consider each situation on a case by case basis, and provide a waiver where appropriate. State agencies are advised to contact FNS’ Regional Offices as situations arise.”

ACTE comments to the USDA on the interim final rule noted that the waiver proposal was a positive move toward providing regulatory relief for CTE programs. However, we highlighted several issues that the department needed to address to provide necessary guidelines and technical assistance for states and school districts while ensuring transparency in the process. We also recommended that given the prohibitions of section 11(a) of the CNA and 12(c) of the NSLA, that the secretary should exercise his authority to exempt CTE program enterprises from the nutrition requirements altogether. This position was supported by a bipartisan coalition in the U.S. House of Representatives who sent a letter to Secretary Vilsack in October 2013. They wrote, “We respectfully request that you [the secretary] use the authority provided under the National School Lunch Act to exempt from the Smart Snacks in School standards, the sale of foods crafted by students as part of their academic programs. We believe this common sense approach will both uphold the congressional intent behind the HHFKA and avoid diminishing future career opportunities for young learners.” The department provided no response to any of the issues referenced in the comments submitted by ACTE or the letter from Members of Congress.

On April 22, 2014, the FNS issued a memo (SP 40-2014) to the Regional Directors of Special Nutrition Programs and State Directors of Child Nutrition Programs regarding the Smart Snacks nutrition requirements and culinary education programs. The memo asserted, “Section 12(I)(4)(J) of the Richard B. Russell National School Lunch Act (NSLA), 42 USC 1760(I)(4)(J), prohibits the secretary from granting a waiver that relates to the requirements of the NSLA, the CNA, or any regulations issue under either statute with regard to the sale of foods sold outside of the school meal programs. Therefore, the nutrition standards included in the interim final rule apply to all foods sold to students on the school campus during the school day, including food prepared and/or sold by culinary education programs.” This guidance suggests a reversal by the department from the proposal in the interim final rule regarding the use of a waiver for CTE programs. While the memo cites the NSLA as justification for this position, there is no mention of the statutory prohibition on imposing requirements on personnel, curriculum, instruction, method of instruction and materials for instruction. This is a very troubling statement by the USDA that serves to further confuse the issue for CTE educators, administrators and students in classrooms across the country.

To clarify the expectations of our CTE programs and provide permanent relief from regulatory overreach, we recommend that committee adopt the provisions of the Jumpstarting Occupational-learning and Entrepreneurship (JOE) Act (H.R. 4713) as introduced by Representative Steve Womack during the 113th Congress. The JOE Act would create a

definition for a school-based enterprise, including student-run restaurants, cafés, bakeries and other food service operations that are curriculum based and intended to enhance student learning, and would establish a specific exemption for such programs. This targeted, common-sense approach would remedy the problems facing CTE programs across the country, while maintaining rigorous nutritional standards for all other competitive foods sold in schools. The relevant section of the bill reads as follows:

Section 10(b)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1779(b)(1)) is amended—

(1) in subparagraph (C)—

(A) by striking “and” at the end of clause (i);

(B) by striking the period at the end of clause (ii)(IV) and inserting “; and”;

(C) by adding at the end the following:

“(iii) exempt from such nutrition standards school-based enterprises managed as part of a school’s curriculum.”; and

(2) by adding at the end the following:

“(E) SCHOOL-BASED ENTERPRISE DEFINED.—For purposes of this subsection, the term ‘school-based enterprise’ means an entrepreneurial operation in a school setting that—

“(i) provides goods or services to meet the needs of the market;

“(ii) is managed and operated by students enrolled in the school as a hands-on learning laboratory;

“(iii) provides realistic and practical learning experiences that reinforce classroom instruction;

“(iv) may sell to consumers through a permanent location, a mobile kiosk, or through Internet marketing; and

“(v) may sell products such as food and beverage items, or provide services such as event catering.”.

Thank you for your consideration of these comments. If you have any questions or would like further information on our recommendations, please contact ACTE’s Legislative and Regulatory Affairs Manager Mitch Coppes (mcoppes@acteonline.org), or Director of Public Policy Alisha Hyslop (ahyslop@acteonline.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen DeWitt", with a horizontal line extending to the right from the end of the signature.

Stephen DeWitt

Deputy Executive Director