

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CENTER FOR SCIENCE IN THE
PUBLIC INTEREST, *et al.*,

Plaintiffs

v.

Case No. 8:19-cv-01004-GJH

SONNY PERDUE, Secretary of the U.S.
Department of Agriculture, *et al.*,

Defendants.

**BRIEF *AMICUS CURIAE* OF THE
PHYSICIANS COMMITTEE FOR RESPONSIBLE MEDICINE
IN SUPPORT OF PLAINTIFFS' POSITION**

INTRODUCTION

Defendants' (collectively "USDA") delay and elimination of sodium standards for school meals is arbitrary and capricious as a matter of law and, if not vacated, will endanger the health of school children. Due to USDA's 2018 regulations, meals served under USDA's school nutrition programs are not "consistent with the goals of the most recent Dietary Guidelines for Americans," 42 U.S.C. § 1758(f)(1)(A), are not "based on" required recommendations, *id.* § 1753(b)(3)(A), and do not "reflect the most recent Dietary Guidelines for Americans," *id.* § 1758(a)(4)(C)(i), in violation of applicable statutes. As a result, excess sodium consumption—allowed and enabled by the USDA regulations challenged by Plaintiffs—presents an actual and imminent long-term harm to school children in the form of high blood pressure, obesity, and other metabolic disorders.

INTEREST OF AMICUS CURIAE

The Physicians Committee is a national public health organization representing more than 175,000 members, including 12,000 physicians, as well as other medical professionals, scientists, and lay persons. Established in 1985, the Physicians Committee advocates for preventive medicine, supports higher ethical standards in research, and conducts clinical research, some of which is federally funded. Many of the Physicians Committee's members joined the organization to obtain adequate representation of their interest in a safe and healthful diet free from risks, including risks to their children in schools. The Physicians Committee's staff includes physicians, dietitians, and scientists.

Given its charitable missions, the Physicians Committee has a keen interest in USDA's proper execution of the federal National School Lunch Program and School Breakfast Program, which operate in more than 100,000 schools and residential childcare institutions. The Physicians Committee has monitored national nutrition policy since 1991, when it issued its first recommendations on the food diagram that accompanies the federal Dietary Guidelines for Americans ("Dietary Guidelines"), upon which the National School Lunch Program and School Breakfast Program are based. The Physicians Committee has participated in all subsequent Dietary Guidelines hearings.

In 2001, the Physicians Committee launched Food for Life, a community-based nutrition education program that teaches laypersons how certain foods and nutrients work to promote health and fight disease. The program operates in more than 40 states and offers a "Kids Health" curriculum. The Physicians Committee operates a "Golden Carrot Awards" program, created in 2004 to recognize food service professionals who make an exceptional effort to improve the healthfulness of school lunches and breakfasts. The Physicians Committee formerly issued a

related periodic “School Lunch Report Card,” analyzing the nutritional quality of the menus offered by the largest school districts participating in the National School Lunch Program.

The primary issue presented in this case, whether USDA may delay and eliminate statutorily mandated, critical school meal nutrition standards, is of great importance to the Physicians Committee because more than 30 million children eat school lunch and 14 million eat school breakfast. See 77 Fed. Reg. 4088, 4109 (Jan. 26, 2012). Ensuring that children receive healthful meals in schools and childcare institutions throughout our country is critical to the health and wellbeing of those children and that of our country.

APPLICABLE LAW

The National School Lunch Act and the Child Nutrition Act intend “to safeguard the health and well-being of the Nation’s children.” 42 U.S.C. §§ 1751, 1771. Toward this end, USDA must issue regulations to ensure that “meal patterns and nutrition standards” are “based on recommendations made by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences” (“Nutrition Board”). Id. § 1753(b)(3)(A). USDA also must issue regulations and guidance, id. § 1758(a)(4)(A)–(B), to ensure that meals are “consistent with the goals of the most recent Dietary Guidelines for Americans,” id. § 1758(f)(1)(A). The Dietary Guidelines are “nutritional and dietary information and guidelines for the general public,” jointly issued by USDA and the U.S. Department of Health and Human Services (“HHS”), that are “based on the preponderance of the scientific and medical knowledge which is current at the time the report is prepared.” 7 U.S.C. § 5341(a). USDA also must “identify, develop, and disseminate . . . model product specifications and practices for foods offered in school nutrition

programs under” the two acts “to ensure that the foods reflect the most recent Dietary Guidelines for Americans[.]” 42 U.S.C. § 1758(a)(4)(C)(i).¹

Pursuant to these mandates, USDA in 2012 established nutrition standards for school meals based on the Dietary Guidelines and a 2009 Nutrition Board study. See 77 Fed. Reg. at 4088; see also 82 Fed. Reg. 56,703, 56,703 (Nov. 30, 2017). The regulatory standards phased in a final sodium target via two intermediate targets: Target 1 to be achieved by the 2014–2015 school year and Target 2 to be achieved by the 2017–2018 school year. 77 Fed. Reg. at 4097–98, 4146–47, 4156–57. The final sodium target was to be achieved by the 2022–2023 school year, id. at 4098, at which point the sodium standard would for the first time reflect the most recent Dietary Guidelines, id.

FACTS

After Congress and USDA delayed implementation of sodium Target 2, USDA in 2018 issued new regulations—challenged by Plaintiffs—delaying implementation of sodium Target 2 five more years and eliminating the final sodium target. 83 Fed. Reg. 63,775, 63,776, 63,787 (Dec. 12, 2018). USDA did so despite its acknowledgment that “[m]ore than 9 in 10 U.S. school children eat more sodium than the age-specific Tolerable Upper Intake Level.” Id. at 63,787. USDA also acknowledged that even under sodium Target 1, school children were already consuming over 90 percent of their daily recommended sodium limits just in school breakfast and lunch alone. Id.

¹ Despite this language, USDA’s Memorandum in Support of Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment and Defendants’ Cross-Motion for Summary Judgment (ECF No. 27) (“Defs.’ Br.”) stated, “But ‘reflect the Dietary Guidelines’ is not the statutory standard.” Defs.’ Br. at 15 n.2.

ARGUMENT

The federal Dietary Guidelines recommend different daily sodium limits for children aged 4 to 8 years, children aged 9 to 13 years, and children aged 13 or above. HHS & USDA, 2015–2020 Dietary Guidelines for Americans 98 (2015) (“2015 Dietary Guidelines”), https://health.gov/dietaryguidelines/2015/resources/2015-2020_Dietary_Guidelines.pdf. These age-specific recommendations have remained the same since 2010. Compare id., with USDA & HHS, Dietary Guidelines for Americans, 2010 76 (2010), <https://health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf>. Prior to the 2012 nutrition standards, however, the mean sodium content of lunches offered and served in more than three-quarters of schools exceeded the Dietary Guidelines’ recommendations by more than 50 percent. Food & Nutrition Serv., USDA, School Nutrition Dietary Assessment Study-IV: Summary of Findings 15 (2012), https://fns-prod.azureedge.net/sites/default/files/SNDA-IV_Findings_0.pdf.

Dietary sodium is a risk factor for childhood high blood pressure, or hypertension. Goutham Rao, Diagnosis, Epidemiology, and Management of Hypertension in Children, 138 Pediatrics 1, 1 (2016). High blood pressure in childhood is associated with increased risk of high blood pressure in adulthood, id., as well as higher risk of cardiovascular disease, Jonna Jehola et al., Combined Effects of Child and Adult Elevated Blood pressure on Subclinical Atherosclerosis: The International Childhood Cardiovascular Cohort Consortium, 128 Circulation 217, 222 (2013), the leading cause of death in the United States. Children with hypertension are also at a high risk for metabolic disorders, including insulin resistance and lipid disturbances. Rao, supra, at 2. High salt intake in children is associated with a higher body fat and an increased risk of obesity, independent of energy intake. Yuan Ma et al., High Salt Intake: Independent Risk Factor for Obesity?, 66 Hypertension 843, 844 (2015).

Studies confirm the importance of school meals to establishing overall dietary habits of children inside and outside of school. E.g., Renata Micha et al., Effectiveness of School Food Environment Policies on Children's Dietary Behaviors: A Systematic Review and Meta-analysis, 13 PLoS One 1, 17 (2018). Healthy eating patterns begin at an early age. The tastes and habits children learn consuming school meals reverberate through their entire lives, setting children on a path to good health or a path to poor health. In addition to teaching healthy habits, school meals provide children a substantial proportion of their daily nutrition. Children consuming both breakfast and lunch from the National School Breakfast and School Lunch Programs could receive over 50% of their daily intake from school meals. Karen Weber Cullen & Tzu-An Chen, The Contribution of the USDA School Breakfast and Lunch Program Meals to Student Daily Dietary Intake, 5 Preventive Medicine Reports 82, 83 (2016).

A systematic review and meta-analysis examining the quantitative effects of school food environment policies on children's habitual dietary intakes found that in schools where meal standards directed the provision of healthy foods, sodium intake for children was reduced by 170 mg/day. Micha, supra, at 17. The meta-analysis also found that this reduction in sodium intake in school meals did not cause children to compensate by consuming additional sodium outside of school. Id. In other words, reducing sodium consumption in schools reduces sodium on the whole. Id. Such standards had other tangible beneficial impacts on the health, including increased fruit intake, reduced total fat intake, and reduced saturated fat intake. Id.

About 90 percent of U.S. school children consume dietary sodium far in excess of the Dietary Guidelines' recommendations. Zerleen S. Quader et al., Sodium Intake among US School-Aged Children: National Health and Nutrition Examination Survey, 2011–2012, 117 J. Acad. Nutrition & Dietetics 39, 39 (2017). Even at the Target 1 levels, school meals may

provide, in breakfast and lunch together, 89 to 93 percent of a child's recommended daily sodium intake. Compare 77 Fed. Reg. at 4098, with 2015 Dietary Guidelines at 98. That is nearly all of a child's recommended sodium without accounting for the sodium consumed during dinner and snacks. This is particularly problematic because school children consume most of their daily sodium intake at dinner (39%) and from snacks (16%) collectively. Quader, supra, at 43.

The sodium standards that USDA delayed and eliminated would have brought school meals into compliance with statutorily mandated nutrition benchmarks for the first time. And they would have benefited the health of children. For example, in previously discussing the 2012 nutrition standards, USDA acknowledged that "reductions in dietary salt could substantially reduce cardiovascular events and medical costs." 76 Fed. Reg. 2494, 2502 (Jan. 13, 2011). USDA also acknowledged that "reducing dietary salt in adolescents could yield substantial health benefits by decreasing the number of teenagers with hypertension and the rates of cardiovascular disease and death as these teenagers reach young and middle age adulthood." Id. But now those health benefits—and the statutory mandates that would have brought them about—are no longer of concern to USDA. The consequences may prove deadly for school children.

CONCLUSION

The National School Lunch Act and Child Nutrition Act require school meals to meet nutritional requirements that are "consistent with the goals of the most recent Dietary Guidelines for Americans," 42 U.S.C. § 1758(f)(1)(A), and "based on" Nutrition Board recommendations, id. § 1753(b)(3)(A). USDA must take steps to ensure that foods served under the acts "reflect the most recent Dietary Guidelines for Americans." Id. § 1758(a)(4)(C)(i). Even if, arguendo,

USDA may consider factors in addition to nutrition in formulating its regulations, see Defs.' Br. at 17–20, USDA may not do so at the expense of statutorily required considerations, as it has done here. USDA's 2018 regulations delaying and eliminating longstanding sodium standards for school meals are not based on the required nutrition standards and do not result in foods that reflect the most recent Dietary Guidelines. USDA's 2018 regulations are arbitrary and capricious and in violation of the Administrative Procedure Act, as set forth in Plaintiffs' Complaint and motion for summary judgment. Therefore, the Physicians Committee respectfully urges the Court to find in favor of Plaintiffs and to vacate the 2018 regulations challenged by Plaintiffs.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel of record.

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