Feeding America’s Schoolchildren
Navigating the Complicated Legal Terrain and Practical Challenges of Federal School Nutrition Programs

A Policy Options Brief
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Public Health and Federal School Nutrition Programs

As the number of overweight and obese children skyrocketed over the past decade, stakeholders around the country identified a range of strategies to address the problem, with federal school nutrition programs seen as a critical component in national efforts to reduce childhood obesity. At the same time, school officials are faced with a complex system of legal requirements and practical challenges to getting nutritious food on children’s trays. The new school nutrition standards developed as part of the Healthy, Hunger-Free Kids Act of 2010 have created additional pressure on school food service programs to provide food that meets national dietary guidelines for good health. With limited budgets (schools typically have about one dollar per meal to spend on food for lunches and even less for breakfast), foods used in school nutrition programs must be both nutritious and affordable. By understanding the school food system, those who support serving nutritious food in schools will be in a better position to identify opportunities for collaboration, build new partnerships, and obtain critical resources.
This report provides public health officials and other school stakeholders with an overview of legal and practical considerations impacting federal school nutrition programs* by:

- Examining the federal legal framework governing federal school nutrition programs and how this framework impacts schools’ practices of obtaining food for these programs;
- Illustrating how legal and practical considerations in one state, Minnesota, interact with federal legal requirements and practical considerations in the operation of federal school nutrition programs in the state; and
- Highlighting innovative practices school nutrition programs may adopt to obtain nutritious school food, while following federal and state legal requirements.

This report focuses on key legal and practical issues most relevant to schools seeking to serve nutritious school food. While it may not provide an exhaustive legal analysis of all laws (state or federal) impacting school nutrition programs, relevant examples and case studies from other states are incorporated whenever appropriate.

### History of Federal School Nutrition Programs

The first federal school meal program was created in the 1930s to provide subsidized meals to alleviate childhood hunger and create a market for surplus U.S. agricultural products. Over the past 80 years, federal school nutrition programs have expanded from a single Depression-era program to a multifaceted approach, expanding the original anti-hunger and agricultural development goals to support healthy child development, academic achievement, food and nutrition education, and, most recently, obesity prevention. These programs now include breakfast, fresh fruit and vegetable snacks, after-school snacks, summer meal services, and subsidized milk. The School Breakfast Program supports learning, as students who eat a healthy breakfast are more alert and perform better throughout the school day. The Fresh Fruit and Vegetable Program introduces children from low-income areas to a variety of fresh fruits and vegetables, providing essential nutrients needed for children to grow up healthy and strong. Farm to school programs and school gardens support local farmers, teach children where their food comes from, and place a variety of fresh, locally grown or raised foods on children’s trays.

### Children’s Health and School Food

The increase in the prevalence of childhood obesity is one of the greatest public health challenges facing this generation. Over one-third of all U.S. children and adolescents age 6 to 19 are overweight or obese. These children are at increased risk of becoming obese adults and suffering from cardiovascular disease, stroke, type 2 diabetes, several cancers, osteoarthritis, obstructive sleep apnea, and psycho-social problems.

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* This report focuses on food served as part of established federal school nutrition programs, including the National School Lunch and School Breakfast Programs, Afterschool Snack Program, Summer Food Service Program and Seamless Summer Option, Special Milk Program for Children, and the Fresh Fruit and Vegetable Program. Food served outside of these programs, also called “competitive school food” is not specifically discussed as there are different legal and policy issues impacting this type of food.
Improving the quality of school food is a logical place to focus efforts to reduce childhood obesity. Children participating in school breakfast and lunch programs may consume over half their required daily calories at school, making these programs a very important part of their diets.\(^9\) The National School Lunch Program operates in 94% of all public and private schools with 89% of public schools that operate the National School Lunch Program also operating the School Breakfast Program.\(^10\) In 2010, 63% of children attending a participating school (equalling over 31 million children) received meals through the National School Lunch Program, and 28% (equalling nearly 12 million children) received meals through the School Breakfast Program.\(^11\) In order to receive free meals through the National School Lunch Program, children must come from households with income less than 130% of the national poverty level.\(^12\) For households with incomes between 130% and 185% of the national poverty level, reduced price meals are offered.\(^13\) Nationally, approximately 48% of public school students were eligible for free or reduced-price lunches during the 2010-2011 school year.\(^14\) Of the 825,000 K-12 students enrolled in Minnesota public schools in 2012, over 37% qualified for free or reduced-price school meals.\(^15\)

Even as the federal school nutrition programs combat childhood hunger, there is a renewed focus on ensuring that the food is healthy and aligned with current dietary recommendations. The Healthy, Hunger-Free Kids Act of 2010 authorized the United States Department of Agriculture (USDA) to revise the meal patterns and nutrition standards for school meals. In 2012, the USDA finalized updated nutrition standards for school meals for the first time in over 15 years.\(^16\) The new meal pattern recognizes the role of school nutrition programs in childhood obesity prevention by setting age-appropriate calorie maximums and modifying the longstanding calorie minimums, requiring all milk to be low-fat or fat-free, and increasing the amount of whole grains, fruits, and vegetables.\(^17\) As the new meal pattern is being implemented, schools are concerned over the anticipated higher cost of meals, acceptance of these meals by students, and new administrative requirements.\(^18\)

At the same time, public health advocates and a growing number of schools across the country are advocating for farm to school programs and other practices to increase the quality and variety of fruits, vegetables, and other foods being served.* Newcomers to the school nutrition arena sometimes have little understanding of the numerous federal and state legal requirements to which school nutrition programs must adhere. Likewise, the lack of a common vocabulary among public health practitioners, school food service professionals, and state and federal agencies can hinder collaborative efforts to meet shared goals of supporting children’s health, education, and well-being through school nutrition programs. This report attempts to facilitate greater collaboration among these stakeholders by providing a common vocabulary and highlighting innovative practices used to obtain food used in federal school nutrition programs.

Part I
School Food Environment and School Nutrition Programs

The school food environment is generally divided into two categories: (1) foods and beverages served as part of federal school nutrition programs and (2) competitive foods and beverages.

Federal School Nutrition Programs

The most common federal school nutrition programs include the National School Lunch Program, School Breakfast Program, Afterschool Snack Program, Summer Food Service Program and Seamless Summer Option, Special Milk Program for Children, and Fresh Fruit and Vegetable Program. These programs provide the main source of food for children in primary and secondary schools in the United States.*

Competitive Foods

Competitive foods and beverages include those foods and beverages that are not part of federal school nutrition programs. As the name indicates, competitive foods and beverages compete with the school nutrition program (i.e. children, as consumers, can choose between federal nutrition programs and competitive foods). Competitive foods may be available in multiple venues including a la carte offerings in school cafeterias, school stores, snack bars, or vending machines. These foods tend to be high in added sugars, fat, and sodium and are subject to minimal federal regulations. The Healthy, Hunger-Free Kids Act (HHFKA) requires the USDA to update the regulation

* While there are other federal nutrition programs that provide food to children in the United States, this report focuses on the main nutrition programs provided through the public school system that have a similar regulatory structure. Other programs are not discussed in this report due to the different regulatory and legal frameworks governing those programs.
This report focuses on the following school nutrition programs:

**NATIONAL SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM**

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) form the core of the federal school nutrition programs. These programs reimburse public and nonprofit schools and residential child care institutions for free and reduced-price meals served to qualifying students. In addition, these programs provide a small reimbursement for “paid” meals (those paid by students at full price) each school day. Schools participating in the NSLP also receive food directly from the USDA through the USDA Foods Program.

**AFTERSCHOOL SNACK PROGRAM**

Schools providing qualified afterschool care programs can also be reimbursed for snacks served during regularly scheduled educational or enrichment activities as part of a school-operated afterschool care program. Snacks must meet federal nutrition standards. If more than 50% of the students enrolled in the school are eligible for free or reduced-price meals (referred to as area eligible), all students in the afterschool care program receive free snacks. Otherwise, the cost (full, reduced-price, or free) for snacks is determined by a student’s family income.

**SUMMER FOOD SERVICE PROGRAM AND SEAMLESS SUMMER OPTION**

The Summer Food Service Program and the Seamless Summer Option offer free meals to children in low-income areas when school is not in session. While the Seamless Summer Option Program is only available to schools operating the NSLP and SBP, the Summer Food Service Program may include other, non-school entities such as camps, churches, community centers, housing projects, libraries, migrant centers, parks, playgrounds, pools, and other public sites where children gather. Most sites typically offer one or two meals per day, but camps and migrant sites may claim up to three meals. The Seamless Summer Option, because it is part of the NSLP and SBP, offers the same reimbursement rate for administrative costs and meals as these programs and the same entitlement to USDA Foods as the NSLP. The Summer Food Service Program has its own reimbursement rate for administrative costs and meals and receives a smaller amount of USDA Foods.

* After-school care programs run by either a community-based organization or a school may be eligible to receive funding for afterschool meals and snacks under the Child and Adult Care Food Program (CACFP). (See http://www.fns.usda.gov/cnd/care/SupperFaqs.htm). A full discussion of the CACFP is outside the scope of this report as this program is operated outside of the legal framework governing federal school nutrition programs. However, many schools are applying for the CACFP at-risk afterschool meal and snack program to accommodate meals and snacks as needed for certain situations and programs like 21st Century grants recipients. (See Food & Nutrition Serv., U.S. Dep't of Agric., Rep. No. CN-11-ATRISK, CACFP At-Risk Afterschool Meals: Best Practices, 2011 (Nov. 2011), available at http://www.fns.usda.gov/cnd/care/Publications/pd/Best_Practices_Report.pdf (accessed Sept. 28, 2012)).
SPECIAL MILK PROGRAM FOR CHILDREN

The Special Milk Program for Children provides a partial reimbursement for milk served by childcare institutions, schools, and camps that do not participate in other federal child nutrition meal service programs. Schools that participate in the NSLP or the SBP may also be reimbursed for milk served to children in half-day pre-kindergarten and kindergarten programs that do not have access to school meal programs.

Some states provide an additional milk program for children. For example, Minnesota operates a separate Kindergarten Milk Program to increase access to milk for kindergarten students in public and nonpublic schools. In 2012 schools were reimbursed up to 20 cents for each half-pint of milk served to kindergarten students. Minnesota schools with kindergarten students who do not have access to school meal programs are eligible to receive both state and federal reimbursement to provide milk for the kindergarten students.

FRESH FRUIT AND VEGETABLE PROGRAM

The Fresh Fruit and Vegetable Program (FFVP) provides cash reimbursements for the cost of fresh fruit and vegetable snacks served outside of school meals at participating elementary schools. This program is designed to introduce school children to a variety of produce, increase consumption of fruits and vegetables, and promote present and future health. Schools are eligible to participate in this program if at least 50% of students are approved for free or reduced-price meals. As funding for this program is limited, schools in each state with the highest percentage of students receiving free and reduced-price meals are prioritized.

This program began as a pilot in 2002 and was expanded nationwide in the 2008 Farm Bill. The USDA released a proposed rule establishing the basic operational requirements for the FFVP in February 2012. The USDA will issue final regulations governing the operation of the program after it has reviewed public comments.

These federal school nutrition programs provide support for meals and snacks served before, during, and after the school day, as well as continuing support for meals when school is not in session. Together, they contribute to a school food environment that helps shape children’s overall diets, exposes children to new foods, and helps children develop healthy eating behaviors.
Key Players in the Operation of Federal School Nutrition Programs

Obtaining food used in school nutrition programs involves federal, state, and local entities in addition to numerous private parties that sell food, supplies, and services to local school nutrition programs. Understanding the different roles, responsibilities, and interactions of these players is important when exploring opportunities to support school efforts to obtain and serve nutritious foods.

Federal Agencies

United States Department of Agriculture

The USDA is responsible for administering federal school nutrition programs. School nutrition programs fall under the larger umbrella of federal nutrition assistance programs, which also include the Summer Food Service Program (SFSP), the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program (CACFP), the Food Assistance for Disaster Relief, and the Food Distribution Programs. Most of the support the USDA provides to schools operating school lunch and breakfast programs is in the form of cash reimbursements for each meal served. The Food and Nutrition Service (FNS), an agency within the USDA, works with states to administer the USDA's nutrition assistance programs, provides technical assistance and clarification on regulations, and reimburses schools for the administrative costs of these programs. The Food and Nutrition Service also directly provides a significant amount of the food used in the federal school nutritional programs through its Food Distribution Program, otherwise known as USDA Foods.

Department of Defense

The USDA began a partnership with the United States Department of Defense (DoD) in 1994 to increase the availability of fresh fruits and vegetables in schools and other institutions by using DoD's existing supply chain and distribution system for delivering food to military bases around the country. Known as DoD Fresh, the program currently operates within 45 states and the District of Columbia.

Food & Drug Administration

The Food & Drug Administration (FDA) is also involved, sometimes indirectly, in the implementation of federal school nutrition programs. The FDA develops food safety standards, such as those found within the Food Safety Modernization Act. The FDA also produces a model Food Code, which states use as guidance for state-level food safety and licensing requirements.

State Agencies

Designated State Agency

In each state, a designated agency (typically the department of education) oversees the state-wide operation of the local school nutrition programs and ensures consistency in the administration of the programs across the state (while school food authorities, discussed below, are responsible for operating the program at the local level). State agencies provide training and technical assistance to school food authorities and conduct administrative reviews of programs in individual schools to ensure compliance with federal requirements. These state agencies are also
responsible for ordering and distributing USDA Foods.\textsuperscript{57}

While schools are not required to participate in federal nutrition programs, almost all public schools and many private schools do.\textsuperscript{58} The Minnesota Department of Education reimburses school food authorities from funds received by the federal government based on the number of paid, reduced-price, and free lunches served to students.\textsuperscript{59} Minnesota provides additional reimbursement from state funds to help cover costs.\textsuperscript{60}

**Other State Agencies**

Depending on the state, the department of health or agriculture is generally responsible for state-level food safety and licensing requirements, including food safety and licensing requirements for school nutrition programs.\textsuperscript{61} State departments of health and agriculture also often work with state departments of education, school food authorities, and local agriculture and public health departments to support school efforts to serve safe and healthy food to students.\textsuperscript{62}

**Local Authorities**

**Local Educational Agency**

Local educational agencies provide the school structure within which school nutrition programs exist. Local educational agencies are involved in the administration of the federal school nutrition programs, including determining a student’s eligibility for free or reduced meals based on

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**LOCAL EDUCATIONAL AGENCY**

A *local educational agency* is the public board of education or other public or private nonprofit authority created under state law to provide administrative control or other services for public or private nonprofit elementary schools or secondary schools within a state.


**SCHOOL FOOD AUTHORITY**

A *school food authority* (SFA) is the governing body responsible for the administration of federal school nutrition programs in one or more schools. An SFA has the legal authority to operate the federal school nutrition program or is approved by FNS to operate the program.


**PROCUREMENT STANDARDS**

The term *procurement standard* refers specifically to the standards schools are legally required to meet when purchasing food or services for use in school nutrition programs. Schools must follow both federal and state procurement standards. If there is a difference between a state or federal procurement standard, the school must follow whichever standard is strictest.

**Sources:** 7 C.F.R. § 3016.36 (2012); 42 U.S.C. § 1760(n) (2006).
family income standards provided by the USDA. A local educational agency is usually called a school district in most states.

**School Food Authority**

Federal school nutrition programs are operated at the local level by *school food authorities* (SFAs). While most SFAs operate as part of a single local educational agency, or school district, SFAs can operate federal school nutrition programs for part of a local educational agency or for multiple local educational agencies, depending on the state educational structure or the needs of individual local educational agencies. A school food authority may also be comprised of a combination of local educational agencies, or other public or private nonprofit institutions or agencies.

A school food authority is established when a school official completes an application on behalf of the school or group of schools seeking to operate a federal school nutrition program. The designated state agency, usually the state department of education, approves applications and oversees the operation of these federal school nutrition programs by the local SFA. If an applicant is found eligible, the state agency enters into a contract with the SFA to administer the school food program for the specified school or schools. The school food authority is responsible for operating a nonprofit school food program and following detailed federal requirements when operating the program.

**Private Players**

Many state agencies and SFAs work with private entities to implement school nutrition programs. These private players can include food service management companies, group purchasing organizations, purchasing cooperatives, and food distribution and processing companies.
How Schools Obtain Food Used in School Nutrition Programs

Schools generally obtain the food used in their school nutrition programs in two ways: (1) by purchasing food (often referred to as procurement) and (2) by participating in the USDA Foods Program.

Purchased Food

School food authorities rely heavily on bidding and contracting with food suppliers, operators, and distribution companies to purchase food for school nutrition programs. School food authorities must ensure that federal and state purchasing requirements, or procurement standards, are followed when food, services and supplies are purchased for use in federal school nutrition programs. Federal and state procurement standards for school nutrition programs address a broad range of issues including, but not limited to competitive bidding and contracting requirements; circumstances in which a competitive process is not required; and the purchase of domestically grown and processed foods to the maximum extent practicable. Federal regulations also address circumstances in which school food authorities can use geographic preference when purchasing unprocessed locally grown or raised agricultural products for school nutrition programs. These regulations also provide specific requirements for SFAs that hire a contractor or delegate some of the administration of the school’s food service programs to an outside entity, such as a food distributor, collective purchasing group, or food service management company.
Competitive Bidding and Contracting Requirements

The use of public funds is carefully regulated. A key component of most government procurement standards is creating an open and competitive environment. A fundamental goal behind this government regulation is to limit discretion, fraud, and favoritism whenever practical, that taxpayers will generally pay the lowest price possible. 82

Federal Requirements

Federal regulations identify, based on cost, the methods SFAs must use to purchase food and services.

COMPETITIVE SEALED BIDS

Procuring food through competitive sealed bids requires the SFA to publicly solicit bids from multiple sources on the cost of providing the products desired (as outlined in a formal invitation for bid, or IFB). 71 According to USDA, competitive sealed bidding is used when:

1. Complete specifications or descriptions of the product or service are available or could be developed by the SFA;
2. The only difference between responsive bids will be price; and
3. More than one qualified source is expected to compete for the award.

After the closing date and time of the solicitation, school officials open and evaluate the bids. A firm fixed-price, written contract is then awarded to the bidder who can meet the material terms and conditions of the invitation for bid for the lowest price, i.e., the lowest responsive and responsible bidder. 73

COMPETITIVE PROPOSALS

When the conditions are not appropriate for the use of competitive sealed bids, SFAs may procure food and services through competitive proposals (sometimes referred to as competitive negotiations). 74 Under this method, school officials issue a request for proposals (RFP) outlining general requirements for the food contract but allowing vendors flexibility in determining the specific food items or brands they propose that will meet those requirements. 75 The RFP is publicized, a proposal opening is held, and negotiations are conducted with the sources submitting offers. 76 When a winner is chosen, either a fixed-price or cost-reimbursable type contract is awarded. 77

SMALL PURCHASE METHOD

The small purchase method requires SFAs to develop a written solicitation to identify the number, quality, and type of goods or services needed. 78 Unlike the formal procurement methods, which require public advertisement, when using an informal method, SFAs may choose to directly contact three or more potentially qualified competitive sources for a quotation, or price quote. 79 Even though this method is more informal, it still requires some level of competition. 80 While $150,000 is the most that can be purchased under the small purchase threshold, state and local laws may specify a lesser (more restrictive) amount. 81

food, services and supplies for food service programs.\textsuperscript{83} Federal procurement standards require the use of either competitive sealed bids or competitive proposals for purchases estimated to exceed $150,000.\textsuperscript{84} For the procurement of food, services or supplies falling beneath the small purchase threshold of $150,000 SFAs may use a more informal procurement method known as the small purchase method.\textsuperscript{85}

School food authorities may not intentionally split up large purchases in order to fall beneath the small purchase threshold. However, purchases of certain perishable products such as milk, bread, and fresh produce may be considered separate markets and purchased separately, thereby potentially falling below the threshold.\textsuperscript{86} The ability to purchase perishable products separately can help facilitate the purchase of fresh produce and other more nutritious foods from alternative sources.

\textbf{State Contracting and Bidding Requirements}

Even though an SFA must follow federal procurement standards with its bidding and contracting process, an SFA’s power to enter into contracts comes from the authority granted to a local educational agency under state law. State laws may also include different procedural requirements and price thresholds for purchases made by local school districts than those required under federal law. While some states may have less restrictive purchasing requirements for governmental entities than federal standards, SFAs must follow the most restrictive to ensure compliance with both state and federal laws.\textsuperscript{87}

For example, Minnesota’s Uniform Municipal Contracting Law recognizes school districts as a municipality authorized to enter into contracts and includes specific procedures municipalities must follow when entering into different contracts.\textsuperscript{88} The current small purchase threshold standard for schools in Minnesota is not clear. While the current version of this law requires a school district to use the competitive bidding process if the amount of the contract is estimated to exceed $100,000, the Minnesota Department of Education references the new federal small purchase threshold standard which was recently updated to require a competitive bidding process for purchases over $150,000.\textsuperscript{89} It is likely that the state small purchase threshold of $100,000 will be raised to be consistent with the new federal small purchase threshold.

If the cost of the contract is estimated to exceed $25,000, but not to exceed $100,000 (or $150,000 if this threshold is raised), competitive bidding is allowed but not required. The school district has the option of either using the competitive bidding process or making the contract by direct negotiation, i.e., small purchase method. If it chooses to use the competitive bidding process, however, it must follow through with the procedure even though it was not originally required. If direct negotiation, i.e., small purchase method, is used, the school district must obtain at least two quotations. Finally, if the contract is expected to be $25,000 or less, Minnesota law allows a school district to make the contract by obtaining quotes, or it may simply buy or sell the item on the open market (i.e., without the use of competitive bidding or quotations). However, since federal laws have no provision for SFAs to make

\* The small purchase threshold applies to purchases up to $150,000 and was recently raised from $100,000 to $150,000, effective October 2010, by the Federal Acquisition Regulatory Council. At the time this report was written, all federal materials had not been updated to reflect this change.
purchases under $25,000 in the open market, SFAs receiving federal funding for school food purchases in Minnesota must satisfy the more restrictive federal procurement requirements.\textsuperscript{90} Under federal law, at least two quotes must be obtained.\textsuperscript{91} Likewise, while Minnesota law allows school districts to purchase perishable foods by direct quotations regardless of price, SFAs still need to comply with the more restrictive federal regulations.\textsuperscript{92}

**Geographic Preference**

While federal procurement requirements generally provide a level playing field for those competing for government contracts, the 2008 Farm Bill added an additional component by allowing school food authorities to use a geographic preference when evaluating bids and quotations for the purchase of unprocessed locally grown and raised agricultural products.\textsuperscript{93} SFAs may award local bidders preference points if they offer unprocessed food grown or raised within the local area defined by the school. In addition to including food in its natural state, this rule defines unprocessed as food that has been minimally processed in a way that facilitates the ease of use for institutions, including cooling, freezing, chopping, and packaging.\textsuperscript{94} While cost continues to be a key consideration, preference points can help unprocessed locally grown and raised agricultural products be more competitive.\textsuperscript{95} The use of geographic preference with school nutrition programs is seen as a tool through which schools can bring fresh, locally grown food to children.\textsuperscript{96}

Under the geographic preference option for school nutrition programs, SFAs are not required to apply a geographic preference when purchasing food for use in school nutrition programs but now have this option when evaluating the competitiveness of different food purchases.\textsuperscript{97} School food authorities determine the geographic area to
be considered local with the caveat that this area must not be so limited that it restricts free and open competition. At the same time, SFAs cannot require all bidders to offer local products. School food authorities must still follow the legal requirements mandating open and free competition in the procurement of local foods, including the appropriate use of geographic preference when evaluating bids.

**Collective Purchases of Food**

State laws can also provide additional tools that local educational agencies and SFAs can use to lower costs by purchasing food collectively through joint powers authorities and laws creating service cooperatives.

State laws typically give specific public entities the authority to enter into agreements and contracts with vendors on each other’s behalf, also called a joint powers authority. All states have some version of a joint powers law, although the extent of the authority and the specific public entities covered varies depending on the state.

For example, the Minnesota Joint Powers Act allows school districts and other specifically identified government entities to jointly exercise the governmental powers and functions each has individually. Accordingly, under Minnesota law, two or more school districts may enter into agreements to purchase specific items and increase efficiencies in the delivery of administrative services and reduce costs.

School food authorities can utilize joint powers agreements to enter into agreements with other SFAs to purchase food for federal school nutrition programs so long as the contract was procured according to federal and state requirements. Joint powers agreements can result in less paperwork and faster turn-around time since there are fewer bids and contracts for an SFA to manage. By exercising joint powers, multiple SFAs may participate in the contract of a single SFA, provided that the contract satisfies applicable state and federal procurement requirements.

All methods of collective purchasing require contracts that follow competitive bidding standards outlined above. More detail on collective purchasing arrangements is provided under *Operation of School Nutrition Programs*, below.

**USDA Foods Program**

Schools can obtain food for use in school nutrition programs through the USDA Foods Program, a food distribution program administered by USDA’s Food and Nutrition Service in partnership with a designated state agency. Operating in tandem with the federal school nutrition programs, the USDA Foods Program distributes domestic agricultural products to schools for use in school nutrition programs. While there is no cost to schools for the food received from the USDA Foods Program, the SFA must pay for any processing or delivery costs associated with these foods. Each local school nutrition program receives a certain amount of food from the USDA Foods Program based on the number of school lunches served (known as an entitlement). In addition, surplus foods are periodically offered to states on a fair share basis as bonus commodities. These bonus commodities result from special purchases by the USDA to help regulate the agricultural market. School food authorities may choose whether or not to accept the bonus commodities. Bonus commodities are provided free of charge and are not part of a school’s USDA Foods entitlement. However, schools must pay shipping and
handling costs for bonus commodities as with other USDA Foods.\textsuperscript{112}

Incorporating USDA Foods into a school nutrition program involves a coordinated effort between the USDA, the designated state agency, and the local SFA. School food authorities are required to accept and use as much food from the USDA Foods program as may be efficiently utilized in its school food service.\textsuperscript{113} In the 2009-2010 school year, USDA Foods provided between 15\% to 20\% of the food offered in each school lunch (including processed foods containing USDA Food ingredients), making the program an important source of food for federal school nutrition programs.\textsuperscript{114} A partnership between the USDA and the Department of Defense also allows SFAs to use their USDA Foods entitlement to obtain fresh produce through the DoD Fresh program.

### Ordering USDA Foods

More than 180 food products, sometimes referred to as \textit{brown box} foods, ranging from brown rice and peanut butter to frozen fruits and vegetables, meat, and dairy products are available through USDA Foods.\textsuperscript{115} The ordering process varies by state.

In Minnesota, schools complete a preference survey developed by the Department of Education to submit requests for the type, quantity, and timing of USDA Foods deliveries for the following school year.\textsuperscript{116} The list of foods on this survey, selected from the full range of products available, is based on historical usage and is modified as needed to incorporate changing preferences. School food authorities submit orders for USDA Foods to the Department of Education.\textsuperscript{117} The Department of Education then aggregates orders by the truckload and submits one final order to the USDA.\textsuperscript{118}

### Delivering USDA Foods

USDA Foods are distributed and delivered to schools in different ways. The state agency specifies where the foods will be delivered when submitting its order to the USDA.\textsuperscript{119} The actual method of delivery is determined based on the amount of USDA Foods a school receives, the processing of food prior to delivery, the involvement of the SFA in any collective arrangements for food processing, and any contract the SFA may have with a food service management company to operate the school food service program.\textsuperscript{120}

Depending on specific arrangements with the state agency and SFA, these orders are delivered to state warehouses, directly to schools,\textsuperscript{121} to commercial distributors, or to manufacturers for additional processing.\textsuperscript{122} State agencies can assess distribution charges for part or all of the direct costs associated with the storage and distribution of USDA Foods.\textsuperscript{123} In Minnesota, some SFAs may have large enough orders to have truckloads of food delivered directly to the school or school district warehouse.\textsuperscript{124} For smaller orders, USDA Foods are delivered to the state warehouse, and the SFA is responsible for arranging for the delivery of the food to the schools where it will be used.\textsuperscript{125} Distribution contracts must meet federal procurement guidelines.\textsuperscript{126}

School food authorities often award their USDA Foods distribution contract to their prime vendor. Prime vendors are broad-line distributors that provide the majority of a school’s food and include a wide range of food products and supplies. Alternatively, an SFA may have multiple distribution contracts.\textsuperscript{127}
Processing USDA Foods

Processed foods provide a significant portion of the food that SFAs receive through the USDA Foods, accounting for between 33 and 50 percent of the total value of USDA Foods received. For example, flour, tomatoes and cheese can be processed into pizza. Likewise, chicken is often processed into nuggets or patties.

There are two primary ways for an SFA to process USDA Foods: 1) sending unprocessed USDA foods to processors to be made into finished items that are then delivered to the schools (the diverted approach), and 2) directly ordering processed food from manufacturers through a rebate or discount system. With either method, the SFA is credited for the value of the USDA Foods used as ingredients.

Both state agencies and SFAs can enter into contracts to have USDA Foods processed. State agencies are responsible for approving these contracts, which must be competitively procured as required by federal regulations. Contracts for processing USDA Foods can include arrangements for the processor to sell end products directly to the SFA or through a distributor. The contracts can be on behalf of one or more SFAs provided that the processor and distributor use a discount, refund, or other value pass-through system that accounts for the value of the USDA Foods in the price of the end product.

State agencies are responsible for ensuring that local processors comply with the USDA Foods program. State oversight includes on-site reviews of in-state processors once every two years, verification of the sales of end products to ensure the value of the USDA food is accurately subtracted from the cost of the processed foods; taking action against any processor found to have improperly accounted for the value of donated foods; and monitoring compliance with any corrective actions the processor is required to take.

Donation or Transfer of USDA Foods

School food authorities may donate or transfer unused foods to other schools or eligible charitable organization, such as a local food bank, with approval from the state agency or the appropriate Food and Nutrition Service Regional Office of the USDA. An SFA must maintain required documentation of any transfer of USDA Foods to another eligible agency.

Department of Defense Fresh Fruit and Vegetable Program

School food authorities may use some of their USDA Foods entitlements to obtain fresh and minimally processed (pre-bagged, pre-cut) produce through the DoD Fresh Fruit and Vegetable Program (DoD Fresh). The DoD works with SFAs to develop purchasing orders and may apply local preference upon request. Produce orders are delivered directly to the school using DoD’s local or regional distribution contracts with costs debited from the SFA’s USDA entitlement account. This ordering and distribution process for DoD Fresh operates separately from the USDA Foods ordering and distribution system.

In addition, the DoD has worked with twelve states to obtain local food through the DoD Fresh program. The DoD has also worked with these states to develop farm to school programs.

The USDA Foods program has evolved over the years along with the needs of schools

* North Carolina, Mississippi, Alabama, Texas, Oklahoma, West Virginia, New Mexico, New York, California, Michigan, Kentucky, and New Jersey.
and farmers. The USDA, state partners, schools, national advocacy groups, and other stakeholders are continuing to work together to address areas in need of improvement.

Nutrition, Food Safety and Food Licensing Requirements

In addition to following the legal requirements to purchase food or obtain USDA Foods, SFAs must ensure that federal school nutrition programs meet specific nutrition standards and meal patterns, comply with food safety standards, and meet other applicable state and local laws.143

Federal Nutrition Standards

The USDA requires that school meals meet certain nutrition standards in order to receive federal reimbursement.144 New federal nutrition standards for school meals, or meal patterns, went into effect for the 2012–2013 school year as a result of new federal regulations created by the USDA that reflect the Dietary Guidelines for Americans and recommendations for school meals made by the Institute of Medicine.145 These regulations increase the amount and variety of fruits and vegetables that must be served; create new requirements for servings of whole grains; limit trans fats to less than 0.5g per serving; limit milk to nonfat or 1%; set age specific minimum and maximum calorie levels; and set maximum saturated fat, and sodium levels.146 See Table I, below. The new nutrition standards will be phased in over a three-year period. For example, initial changes to school lunches were implemented in the 2012–2013 school year while changes to school breakfasts do not go into effect until the 2013–2014 school year. In addition, the new whole grain and sodium requirements have a longer phase-in period. While school lunches and breakfasts must meet these federal requirements, SFAs retain ultimate discretion as to what specific foods are offered and how each meal is served.147
All SFAs will be required to obtain state certification of compliance with the new meal pattern. The certification process may vary slightly by state, but in general SFAs must submit documentation (i.e., menu plans and nutrient analysis) to the state agency overseeing their program. The state agency then reviews the menu plans to certify compliance with the new meal pattern. Alternatively, an SFA may be certified as part of an on-site administrative review. Under this option, the state agency visits schools and obtains copies of their menu plans to conduct its own nutrient analysis. In addition, the state agency must conduct on-site validation reviews of 25% of the certified SFAs, including all large SFAs. Large SFAs are generally those SFAs with 40,000 or more children; in states that have less than two SFAs of this size, the two largest SFAs with at least 2,000 children are considered large. School food authorities must only be certified as meeting the new meal pattern once; on-going compliance is assessed through administrative reviews conducted every three years.

Certified schools are eligible to receive an additional 6 cents per meal in federal funding beginning in October 2012 for meals meeting the new nutrition standards. However, this increased funding may not cover all of the costs associated with the new standards. A recent analysis found that the average cost of school meals adhering to the new meal pattern will be 9 cents higher, primarily as a consequence of the increases in fruit and vegetable offerings.

**Food Safety Standards**

All food served as part of federal school nutrition programs, including food from both local and national sources, must adhere to all applicable federal, state, and local food safety and sanitation standards and requirements. Most food safety standards are based on the FDA model Food Code, which has been adopted by most states under state law.

**Federal Standards**

School food authorities serving meals under the federal school lunch and breakfast programs are required by federal law to obtain and document two food safety inspections, conducted by state or local officials, each year and to maintain appropriate sanitation and health standards pursuant to state and local laws and regulations. Federal requirements include implementing food safety programs based on Hazard Analysis and Critical Control Point (HACCP) requirements. These requirements focus on preventing foodborne illness as food moves from producer to consumer by identifying foods and procedures that are most likely to cause foodborne illness, developing procedures to reduce the risk of foodborne illness, monitoring the use of procedures to keep food safe, and verifying that the food served is safe to eat.

The Food Safety Modernization Act (FSMA) of 2011 requires the FDA to establish new produce safety regulations. The impact of the FSMA on farm to school programs is uncertain as the FDA may exempt some small farms from certain requirements of the Act. In addition, the FSMA requires the FDA to develop new voluntary guidelines regarding food allergies and anaphylaxis management in schools.

The entire law includes over 50 rules, guidance documents, and reports to be developed under a staggered implementation schedule, ranging from six months to several years after the law’s enactment. The FDA will release final regulations after reviewing
TABLE 1: National School Lunch and Breakfast Nutrition Standards, January 2012

<table>
<thead>
<tr>
<th>Grades</th>
<th>Breakfast Meal Pattern</th>
<th>Lunch Meal Pattern</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>K–5&lt;sup&gt;a&lt;/sup&gt;</td>
<td>6–8&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>Meal Pattern</td>
<td>Amount of Food&lt;sup&gt;b&lt;/sup&gt; Per Week (Minimum Per Day)</td>
<td></td>
</tr>
<tr>
<td>Fruits (cups)&lt;sup&gt;c,d&lt;/sup&gt;</td>
<td>5 (1)&lt;sup&gt;*&lt;/sup&gt;</td>
<td>5 (1)&lt;sup&gt;*&lt;/sup&gt;</td>
</tr>
<tr>
<td>Vegetables (cups)&lt;sup&gt;c,d&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dark green&lt;sup&gt;1&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Red/orange&lt;sup&gt;1&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Beans/Peas (Legumes)&lt;sup&gt;1&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Starchy&lt;sup&gt;1&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other&lt;sup&gt;1,g&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Additional Veg to Reach Total&lt;sup&gt;h&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Grains (oz eq)&lt;sup&gt;1&lt;/sup&gt;</td>
<td>7–10 (1)&lt;sup&gt;i&lt;/sup&gt;</td>
<td>8–10 (1)&lt;sup&gt;i&lt;/sup&gt;</td>
</tr>
<tr>
<td>Meats/Meat Alternates (oz eq)</td>
<td>0&lt;sup&gt;k&lt;/sup&gt;</td>
<td>0&lt;sup&gt;k&lt;/sup&gt;</td>
</tr>
<tr>
<td>Fluid milk (cups)&lt;sup&gt;1&lt;/sup&gt;</td>
<td>5 (1)</td>
<td>5 (1)</td>
</tr>
</tbody>
</table>

Other Specifications: Daily Amount Based on the Average for a 5-Day Week

<table>
<thead>
<tr>
<th></th>
<th>Min-max calories (kcal)&lt;sup&gt;m,n,o&lt;/sup&gt;</th>
<th>Saturated fat (% of total calories)&lt;sup&gt;n,o&lt;/sup&gt;</th>
<th>Sodium (mg)&lt;sup&gt;n,p&lt;/sup&gt;</th>
<th>Trans fat&lt;sup&gt;n,o&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&lt;10</td>
<td>&lt;10</td>
<td>&lt;10</td>
<td>&lt;10</td>
</tr>
<tr>
<td></td>
<td>≤430</td>
<td>≤470</td>
<td>≤500</td>
<td>≤640</td>
</tr>
</tbody>
</table>

<sup>a</sup> In the SBP, the above age-grade groups are required beginning July 1, 2013 (SY 2013-14). In SY 2012-2013 only, schools may continue to use the meal pattern for grades K–12 (see § 220.23).

<sup>b</sup> Food items included in each food group and subgroup and amount equivalents. Minimum creditable serving is ½ cup.

<sup>c</sup> One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

<sup>d</sup> For breakfast, vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or Other vegetables subgroups as defined in § 210.10(c)(2)(iii).

<sup>e</sup> The fruit quantity requirement for the SBP (5 cups/week and a minimum of 1 cup/day) is effective July 1, 2014 (SY 2014–2015).

<sup>f</sup> Larger amounts of these vegetables may be served.

<sup>1</sup> For breakfast, vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or Other vegetables subgroups as defined in § 210.10(c)(2)(iii).

<sup>g</sup> This category consists of “Other vegetables” as defined in § 210.10(c)(2)(iii)(E). For the purposes of the NSLP, “Other vegetables” requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in § 210.10(c)(2)(iii).

<sup>h</sup> Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

<sup>i</sup> At least half of the grains offered must be whole grain-rich in the NSLP beginning July 1, 2012 (SY 2012-2013), and in the SBP beginning July 1, 2013 (SY 2013-2014). All grains must be whole grain-rich in both the NSLP and the SBP beginning July 1, 2014 (SY 2014-15).

<sup>j</sup> In the SBP, the grain ranges must be offered beginning July 1, 2013 (SY 2013-2014).

<sup>k</sup> In the SBP, there is no separate meat/meat alternate component in the SBP. Beginning July 1, 2013 (SY 2013-2014), schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.

<sup>l</sup> Fluid milk must be low-fat (1 percent milk fat or less, unflavored) or fat-free (unflavored or flavored).

<sup>m</sup> The average daily amount of calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).

<sup>n</sup> Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

<sup>o</sup> In the SBP, calories and trans fat specifications take effect beginning July 1, 2013 (SY 2013-2014).

<sup>p</sup> Final sodium specifications are to be reached by SY 2022-2023 or July 1, 2022. Intermediate sodium specifications are established for SY 2014-2015 and 2017-2018. See required intermediate specifications in § 210.10(f)(3) for lunches and § 220.8(f)(3) for breakfast.

the public comments of proposed regulations received during this process.

State and Local Requirements

State and local laws and regulations can impose food safety requirements that are stricter than federal law. For example, some states require all farms serving farm to school programs to be Good Agricultural Practices (GAP) certified. In Minnesota, SFAs are required to comply with all federal laws as well as meet the safety and sanitation requirements set forth in the Minnesota Food Code. Minnesota does not have any state laws that specifically address safety and sanitation for local food producers selling food to schools, other than to follow generally accepted practices for all school food. Individual school districts may also impose their own food safety standards. For example, a school district may mandate additional safety requirements for farmers providing food that is part of a farm to school program.

State Licensing Requirements for Sale of Food

State-specific food licensing requirements can impact the types of food that SFAs use in school nutrition programs. Understanding these food licensing requirements may be especially important when exploring alternative sources for food, such as farm to school programs. While the licensing process is generally separate from other food safety requirements, schools should be aware of food licensing requirements to ensure that food obtained for use in the federal school nutrition programs was produced in compliance with state and local licensing laws.

In Minnesota, farmers and food producers are generally required to obtain licenses from the Minnesota Department of Agriculture and possibly other local authorities to sell certain types of food. However, the Minnesota Constitution allows farmers to sell whole or minimally processed products produced by that farmer without a license. Under Minnesota law, the following activities are considered minimal processing and do not require licensing: sorting or trimming (e.g., topping carrots or husking corn) as part of the harvesting process, or washing (e.g., to start the cooling process or to remove extraneous soil and debris). In contrast, Minnesota law considers the following practices to be processing and require licensing: slicing, heating, canning, freezing, drying, mixing, coating, bottling, enrichment, or similar actions. Any addition of off-farm ingredients (e.g., salt) prior to use or sale is also considered processing. Farmers selling whole or minimally processed products are subject to state law regarding food handling and storage, pesticide application, and inspections (meat, poultry, etc.) requirements.
Operation of School Nutrition Programs

A school food service program is operated based on the approach the SFA decides will best meet its needs when purchasing food and services, as long as federal and state legal procurement requirements are followed. Most SFAs (81%) have self-operated food service programs in which the SFA operates and manages the entire food service program. The remainder contract with food service management companies to operate the school food program.

Self-operated Programs

With self-operated food service programs, SFAs are responsible for all aspects of the school food program, including food purchasing, inventory, storage, and delivery to school sites; managing food service personnel; serving meals; processing payments; counting reimbursable meals served; providing nutrition education; and developing menus. Self-operated food service programs obtain food through direct purchasing, collective purchasing, and food received from USDA Foods.*

Under direct purchasing and collective purchasing, SFAs purchase food or services either through an invitation or request for bid (IFB or RFB) or a request for proposal.

* Schools may also obtain food through other methods, such as school gardens. This and other sources of school food are not discussed in this report since they comprise a very small portion of school food and are not generally purchased. For more information on school gardens, see Building Effective and Sustainable Local Gardens to Promote Public Health, Parts 1 & 2, http://publichealthlawcenter.org/webinars/archived.
(RFP). An invitation for bids is the more specific of the two methods and includes a list of items with product specifications that vendors must agree to provide. School food authorities usually request **bottom line** bids, where the vendor agrees to provide all the food items or agreed-upon substitutes (i.e., a market basket) listed in the request for a certain price. School food authorities can pre-approve a list of acceptable substitutes or require all substitutions to be approved on a case-by-case basis. Alternatively, SFAs may solicit **line item** bids, where vendors bid for specific food products or food service supplies (i.e., bread, frozen foods, meats, snacks, etc., on a larger list of needs). Line item bidding may carry higher administrative costs due to the large number of bids. This type of bidding, generally used by large SFAs for items they purchase in large volume, also carries the risk that some items may not receive any bids. School food authorities select the vendor that can meet the terms of the bid at the lowest price. Contracts may be procured several times a year.

When using RFPs, SFAs outline general requirements for the food contract but allow vendors flexibility in determining the specific food items or brands they propose that will meet those requirements. Requests for proposals allow SFAs to consider service characteristics in addition to price when determining the winner of the award. Requests for proposals are typically issued for annual contracts that can be renewed for up to three years. These RFPs generally involve the procurement of prime vendor contracts or contracts with distributors that provide a wide range of food products and supplies. Prime vendor contracts can be useful when SFAs wish to obtain a majority of their food purchases from one vendor, thus limiting the frequency of evaluating bids and proposals and developing a relationship with the chosen vendor. A key aspect of prime vendor bidding is also securing delivery costs.

**Direct Purchasing**

This report defines direct purchasing as a procurement method in which SFAs contract directly with food suppliers (i.e., without the help of collective purchasing agreements or food service management companies, discussed below). These suppliers could be local, regional, or national companies or individual farmers. They could also be food producers, manufacturers, or distribution companies. Direct purchasing gives SFAs greater flexibility and control. Some SFAs in large, urban school districts have found success contracting individually with food suppliers because they have large purchasing power and are able to obtain relatively low delivery costs from the distributor as a result of large quantities purchased.

There are legal and technical definitions for different types of food suppliers. In Minnesota, wholesale food processors or manufacturers are legally defined as “persons who process or manufacture raw materials and other food ingredients into food items, or who reprocess food items, or who package food for sale to others for resale, or who commercially slaughter animals or poultry.” Wholesale food handlers, sometimes called brokers, sell food to others for resale. Retail food handlers, sometimes called distributors, are “persons who sell or process and sell food directly to the ultimate consumer or who custom process meat or poultry.” School food authorities typically purchase food from retail food handlers or distributors. However, they may also have agreements with wholesale food manufacturers to obtain lower pricing.
Collective Purchasing

School food authorities are increasingly turning to collective purchasing in their procurement practices, with approximately half of SFAs now involved in some form of collective purchasing arrangement. Joint powers agreements allow school food authorities to purchase food with other school food authorities to obtain greater buying power and lower prices than they would be able to leverage on their own. In 2007, the Indiana Education Service Centers reported $7.9 million in food service savings through their cooperative food purchasing program. A 2010 national study found that lower food cost was the most common reason school districts joined group purchasing efforts. A 2012 USDA study found that the prices SFAs obtained through collective purchasing is typically less than 10% lower than what can be obtained through direct purchasing.

Collective purchasing efforts must follow any applicable procurement standards when purchasing food for use in school nutrition programs. While smaller and more rural SFAs may gain the most from collective purchasing, the smallest SFAs (<1,000 students) are the least likely to engage in this practice. Collective purchasing can help save money on both food products and delivery. Some collective purchasing arrangements involve contracts with food manufacturers to obtain lower prices on specific food items; others involve contracts with food distribution companies to obtain lower prices based on the typical types and quantities of food purchased by the school, also called a market basket of food items, and delivery fees. Distributors and manufacturers may require minimum order quantities. These quantities are generally either included in the IFB or the vendor’s proposal. At the same time, there can be some drawbacks to collective purchasing. Participating in a collective purchasing arrangement may reduce a school’s autonomy over product specifications, decision-making, and relationships with manufacturers or brokers. Accordingly, SFAs may need to balance lower prices with autonomy over product specifications.

There are three distinct models of collective purchasing used by SFAs: group purchasing organizations (GPOs), state cooperatives, and buying groups. The approach used should be based on the specific needs and resources of the school food service program. If an SFA enters a contract with a third party such as a GPO, buying group, or a cooperative, they must still follow any applicable procurement standards when procuring the services of that third party and ensure that the contract adheres to all federal standards concerning the financial management and operation of the program.
COLLECTIVE PURCHASING MODELS

Group Purchasing Organizations

Group purchasing organizations are national or regional private companies that deliver food to their members using broad-line distributors, i.e., distributors that provide a wide range of food and foodservice-related products. While members of GPOs serving schools must still meet federal, state and local procurement standards when making purchases, GPOs are independent organizations that usually serve a broad-based regional or national market. In general, GPOs competitively bid contracts for many different products and services on behalf of their members, and members decide whether to participate in individual contracts.\(^{193}\) School food authorities wishing to join a GPO must competitively procure the services of that GPO and ensure that the GPO’s contracting process conforms to federal and state procurement standards.\(^ {194}\) Group purchasing organizations vary on whether they charge fees to members or vendors, whether members are required to commit a minimum portion of their purchasing through the GPO, and whether their contracts offer incentives for larger purchasing commitments through tiered pricing.\(^ {195}\) This model can provide substantial cost savings because food is typically purchased in large quantities from food suppliers around the country and delivered to schools in larger shipments. However, it may also limit the ability to request products from a certain geographic location or supplier, or to determine the frequency of delivery.\(^ {196}\)

State Cooperatives

Some states also have cooperatives created by specific state laws to provide shared services to members, with membership defined by state law. While these cooperatives fall within the parameters of a state’s joint powers authority, they may provide additional resources to facilitate cooperative initiatives between members, such as shared training, staff resources and other services. Different state cooperative ventures may be directed towards municipalities more generally or specifically geared towards school districts.

For example, Minnesota law establishes service cooperatives to perform planning on a regional basis and to assist in meeting specific needs of participating governmental units which could be better provided by a service cooperative than by the members themselves.\(^ {197}\) Membership in these public service cooperatives is limited to public school districts, cities, counties, and other governmental units defined by statute.\(^ {198}\) These service cooperatives are run by a governing board of their members and have the authority to bid on behalf of their members.\(^ {199}\) Some Minnesota service cooperatives are involved in the procurement of food for school nutrition programs.\(^ {200}\) Minnesota’s service cooperatives are funded through grants pursued by the cooperatives, annual membership fees, and fee-for-service programs (e.g., school districts pay a fee if they want to have a health and safety consultant provide consulting services to their district).\(^ {201}\) The membership fee is set by each cooperative, but typically involves a base amount plus a per-pupil fee so that larger districts are charged more.\(^ {202}\) Likewise, the Minnesota’s Cooperative Purchasing Venture (CPV) is another legislatively created cooperative initiative that allows eligible entities to purchase goods, certain services, and utilities from contracts established by the Materials Management Division (MMD) for Minnesota state agencies.\(^ {203}\) The Cooperative Purchasing Venture allows eligible governmental entities, including school districts, to use these state contracts just like state agencies.\(^ {204}\)
Buying Groups

Buying groups can be another vehicle through which SFAs can leverage their collective purchasing power to obtain lower prices when purchasing food and services used in school nutrition programs. Unlike GPOs and state-created purchasing cooperatives, buying groups exist when several SFAs come together to negotiate lower prices by combining their purchasing power. A state’s joint powers authority gives SFAs the authority to join buying groups with other SFAs. The involved SFAs may share administrative responsibilities, although there may be a lead SFA that coordinates the bid and contract process for the buying group. Buying groups typically aggregate the purchasing commitments of their members and release a common RFP or IFB to food distributors or food manufacturers. The final awarded contract price is then available to all members. Buying groups may also solicit bids directly from food manufacturers for lower prices on individual food items that meet their agreed-upon product specifications. This line-item bid model is more time intensive as it involves developing separate bids and contracts for each food item. But, it also gives the group more flexibility to procure specific food items that are acceptable to students and meet the buying group’s nutrition and other specifications.

Buying groups tend to be particularly attractive for small and medium-sized SFAs and those in rural areas, which may face higher distribution costs than larger SFAs and those in urban areas. Combined purchasing power and larger orders can lower costs and make maintaining a rural delivery route more worthwhile to a distribution company.

Buying Groups in Minnesota

Minnesota schools can participate in a number of different buying groups across the state, including some that are specific to a certain district or region (e.g., Minnetonka Public Schools (“Minnetonka 4”), Stillwater Public Schools (“Big 8”), Southeast Minnesota United Buying Group, Wadena Buyers Group, etc.), and the Minnesota School Food Buying Group (MSFBG), that is available to any school district across the state.

While these groups typically negotiate contracts with food distributors, the MSFBG is unique in that it negotiates directly with food manufacturers for lower prices. Participant districts commit their volume for each product specification they wish to purchase, district volume is combined, and bids go out to manufacturers. Bids are awarded to manufacturers or brokers based on the lowest price of an acceptable item.

As of early 2012, the MSFBG was managed by staff at Anoka-Hennepin school district and a consultant. The group’s operating budget comes from the administrative fee charged to participants, which depends on enrollment at the school district. Districts that want to join the group must sign a Joint Powers Agreement with Anoka-Hennepin, which must be approved by the school boards of both districts. This process can take up to a few months depending on school boards’ meeting schedules. Once the agreement is in place, districts may participate in any of Anoka-Hennepin’s service contracts, including those for food. Since the MSFBG contracts are only with food manufacturers, participating districts maintain their own contracts with distribution companies.

Programs Operated by Food Service Management Companies

Nineteen percent of SFAs contract with food service management companies to manage their food service operations. Food service management contracts are allowed under federal law provided they are procured according to federal procurement standards, discussed above. The SFA must remain responsible for a number of specific administrative tasks, including oversight and monitoring of the program; preparation of bid solicitations and contract review; maintenance of the financial account of the non-profit food service program; setting prices for reimbursable meals and a la carte items; and ensuring compliance with federal nutrition guidelines and federal and school district requirements for free- and reduced-price policies. Food service management companies can act as food suppliers and perform some of the management functions of the school food program. This arrangement is allowed as long as certain federal requirements are followed.

In addition, the SFA must maintain a significant amount of control and oversight of the food service operation, including ensuring that the food service management company complies with the following requirements:

- Ensuring that all applicable federal procurement standards are met;
- Ensuring that the food service management company follows the written agreement with the state agency for the food service operation;
- Monitoring the food service operation periodically;
- Retaining control over the general nature of the food service and prices charged;
- Signing any agreements with the state agency regarding free and reduced-price meal programs;
- Ensuring that USDA Foods are appropriately used and benefit the food service operation;
- Maintaining appropriate health certifications and ensuring that applicable state and local regulations are met;
- Establishing an advisory board of parents, teachers, and students to assist in menu planning;
- Obtaining written approval of IFBs and RFPs as required; and
- Ensuring that the state agency has reviewed and approved any contract terms or amendments before any contract or amendment is made with an existing food service management company.

School food authorities that work with food service management companies can continue using USDA Foods in school meals. However, before doing so, SFAs must have a properly procured contract with the food service management company. For example, the Minnesota Department of Education requires standard contract provisions to ensure that all USDA Foods will be used in the school’s food service and that the food service management company will comply with other federal requirements. The USDA has outlined specific requirements for ensuring that USDA Foods are appropriately credited to a school food authority’s account with a food service management company.
Part II
School Food Procurement in Practice: Utilizing Purchasing Practices to Improve Nutritional Quality of School Meals

The legal framework outlined above exists to ensure that all school nutrition programs around the country adhere to a common set of rules, practice guidelines, and administrative structures. Within these common characteristics, however, is great diversity in the ways in which schools apply this framework to their own circumstances. School nutrition programs operate in rural, suburban, and urban settings; range in size from less than 100 to nearly one million students; and serve communities with a wide range of socioeconomic, racial, and ethnic diversity. These programs also operate in regions with vastly different climates and agricultural productivity. This common framework therefore allows a certain amount of flexibility in operating local school nutrition programs.

This section reviews some opportunities available to make changes to school meals through developing and expanding farm to school programs; maximizing uses of USDA Foods to support nutrition; and increasing involvement in collective purchasing arrangements.

Expanding Farm to School Programs

Farm to school programs can help schools expand the quantity, quality, and variety of fresh fruits and vegetables served to children. Despite growing opportunities to implement farm to school programs, some barriers remain. These include coordination between farmers, distributors, and SFAs, as well as structural and financial barriers to preparing minimally processed food on site in school cafeterias. Schools may lack facilities and resources, and school nutrition staff may need professional development, training, and additional resources to prepare meals using whole foods.

Building Connections between Schools and Farms

While many wholesale food distributors in Minnesota already have the ability to source local produce, schools are often unaware of this option. The Minnesota Department of Agriculture offers a free online database to facilitate connections between local wholesale providers and consumers. School food authorities and other wholesale purchasers can search by city, zip code, or specific item to identify local wholesale producers. The University of Minnesota Extension also assists schools to develop and expand farm to school programs through an online toolkit, additional resources, and funding opportunities.

Healthy, Hunger-Free Kids Act Farm to School Grant Program

The Healthy, Hunger-Free Kids Act of 2010 competitive grant program helps schools establish farm to school programs and school gardens by providing grants and technical assistance. The program is designed to improve school nutrition, reduce hunger, and support local agriculture and local economies. The Act also establishes a pilot program to increase the amount of organic foods served in schools. Beginning October 1, 2012, grants of up to $100,000 became available to schools for training, planning, purchasing equipment, implementing school gardens, and developing new farm to school partnerships and programs. In the first funding
round, the USDA solicited applications for planning and implementation grants. Planning grants are intended for SFAs interested in starting farm to school activities. These grants are intended to help them organize and structure their farm to school efforts for maximum impact by integrating known best practices into early design considerations. Implementation grants are meant to support the development of existing farm to school initiatives. School food authorities that participate in the National School Lunch or Breakfast Programs were eligible to apply for both the planning and implementation grants.

Grant funds will be made available on a competitive basis, subject to availability of federal funds. However, priority consideration will be given to schools that serve a high percentage of children who are eligible for free or reduced-price meals, offer local foods on the menu, include farm- and garden-based experiential nutrition education, collaborate with non-governmental community partners, plan participatory evaluations of programs, or demonstrate long-term sustainability potential.

State-based Funding of Farm to School Programs

States may also offer state-based funding to schools to develop or implement farm to school programs. For example, the Minnesota Department of Health has supported school efforts to develop and implement farm to school programs through the Statewide Health Improvement Program.

Maximizing Use of USDA Foods to Improve School Nutrition

States and schools are increasingly exploring alternative ways to use their USDA Food entitlements to meet the needs of specific schools, respond to regional preferences, and serve high quality, nutritious school food.

Cash in Lieu of Commodities and Commodity Letters of Credit

In the 1980s, two pilot programs emerged in response to criticisms in the structure and operation of the USDA Foods program (known at that time as the “USDA Commodity Program”). Cash in Lieu of Commodities allowed specified schools to receive the value of their entitlement commodities in cash rather than actual food products. Commodity letters of credit enabled schools to purchase their entitled amount of specified commodity products from the sources they chose. While a small number of schools initially participated in these pilot programs, proposals for expanding the programs were never approved.

Only three types of sites are eligible to receive cash instead of USDA Foods: 1) schools that participated in these pilot projects and are permanently “grandfathered” into the programs, 2) all schools in the state of Kansas, and 3) nonresidential child care institutions participating in the Child and Adult Care Food Program (CACFP) that choose to receive their entitlements in cash. Currently, fewer than 20 percent of eligible childcare institutions continue to request USDA Foods. In Minnesota, all CACFP institutions choose cash in lieu of commodities.

Schools that do not fall into one of the above categories may not receive cash in lieu of commodities or commodity letters of credit.

Emerging National Pilot Programs

New pilot programs to increase schools’ access to fresh fruits and vegetables are also
under consideration. In 2011, the USDA proposed pilot programs in Michigan and Florida aimed at increasing fresh fruit and vegetable procurement through entitlement funds. As proposed, these states would work with USDA officials to identify fresh produce suppliers certified through the Good Agricultural Practices (GAP) Program and willing to contract with schools. As part of this pilot program, the USDA would solicit products from suppliers and growers at a fixed price. Schools would then obtain products from the awarded vendors through the USDA Foods ordering and distribution system. Participating schools would include local preferences when deciding which suppliers use. However, there is concern that the GAP certification, which is expensive and time-consuming, may exclude many small farmers from participating.

The status of these proposed programs remains uncertain. However, other proposed initiatives to support the purchase of local foods by schools have been introduced in the 2012 Farm Bill.

**USDA Foods and Nutrition Standards**

The nutritional profile of USDA Foods is being shaped by changes within as well as outside of the agency. From within, the USDA is increasing the number and variety of healthy options available through the USDA Foods program including more whole grain products, more fruits and vegetables, and leaner meats. From the outside, SFAs work with state agencies to order USDA Foods that will help them meet the new nutrition standards. In Minnesota, the Department of Education (MDE) surveys SFAs for specific types and amounts of USDA Foods, then aggregates these survey requests and places orders with the USDA for the upcoming school year. Because MDE orders food by the truckload, the survey process is a critical point where the aggregate demand for healthy food products is coordinated. School food authorities can shift the nutritional profile of USDA Foods served in the state’s schools through these annual orders.

**Increasing Use of Collective Purchasing**

Collective purchasing can help SFAs maximize buying power and affordably provide a high quality and variety of food to students. Food suppliers can offer lower prices when they know they will be selling more food overall. Lower food prices save SFAs money, and may allow them to purchase greater quantities of higher-cost foods such as fresh fruits and vegetables. Collective purchasing can be particularly helpful for small or rural schools by lowering both food costs as well as delivery fees. With multiple purchasing models available, SFAs can select the approach that works best for them so long as applicable procurement standards are followed.

School food authorities are generally able to belong to multiple collective purchasing arrangements. Many arrangements work hand-in-hand. For example, schools may receive lower prices from food manufacturers through a statewide purchasing group, but lower distribution prices from food distributors through a regional buying group. In fact, the increased buying power can increase a school’s leverage to demand healthier products from vendors. For example, requests for lower calorie milk from schools in St. Paul, Minnesota and Indiana prompted local dairy companies to develop lower sugar chocolate milk to meet school nutrition guidelines.

When small school districts participate in collective purchasing, they can benefit from the volume of the partners making larger
purchases. At the same time, collective purchasing might be less attractive to large districts if they are required to pay a larger fee, or one proportionate to their purchases or their enrollment. In those circumstances, a larger school district may conclude that the membership fees outweigh the cost savings. However, because greater cost savings are achieved with higher commitments, school districts are generally encouraged to conduct their purchasing collectively when possible.

**Developing Wellness Policies**

Local educational agencies (LEAs) can also impact the nutrition of school food through the development of school wellness policies. Federal law requires all LEAs to have a local school wellness policy that includes, at a minimum, “goals for nutrition education, physical activity, and other school-based activities that promote student wellness, as well as nutrition guidelines to promote student health and reduce childhood obesity for all foods available on each school campus.” As school wellness policies are developed at the local level, these policies can be an effective way for public health and other school stakeholders to provide input on the type of school food environment they would like to see implemented in the district.
Conclusion

While much has been done to support school efforts to improve the nutritional quality of food in federal school nutrition programs, the road ahead is long. School nutrition directors; state education, agriculture, and public health administrators; USDA officials; and other critical stakeholders will need to work together to address areas needing improvement in their local settings. Understanding each stakeholder’s priorities and constraints is essential to constructive dialogue. Open communication, resource sharing, and collaborative problem-solving will be essential as schools implement the new USDA meal pattern. Creating a healthier school food system requires more than just a new meal pattern — it takes a systems approach, one that requires reevaluating existing school food systems, developing new partnerships, and investing in new strategies. This report attempts to contribute to these aims by illuminating the complex set of federal, state, and local requirements that SFAs must follow in the operation of federal school nutrition programs. As the purpose and scope of federal school nutrition programs continues to expand, policy and practice change will be needed in order to achieve the complementary goals of nourishing healthy children and supporting healthy agriculture.
Endnotes


12 School Food Purchase Study, supra note 11, at 8.

13 Id.


15 MARSS-Student Accounting: Fall Enrollment Detail by School, Grade and Student Category – October 2003 to October 2011, http://education.state.mn.us/MDE/SchSup/SchFin/MARSSStuAcc/index.html (under Document Downloads, click linked titled “Fall Enrollment Detail by School, Grade and Student Category – October 2003 to October 2011”) (last visited Nov. 30, 2012).


29 7 C.F.R. § 225.16(b); Food & Nutrition Serv., U.S. Dep’t of Agric., *The Summer Food Service Program: 2012 Administrative Guidance for Sponsors* 36 (2012), available at http://www.fns.usda.gov/cnd/summer/library/HandBooks/AdminGuideSponsors.pdf (“Sponsors may serve lunch and either breakfast or a snack. With State agency approval, sponsors may serve up to two meals or one meal and one snack each day.”).


37 FFVP Handbook, supra note 5, at 7.

38 Id. at 1.


40 See FFVP Handbook, supra note 5, at 5; FNS Memo: FFVP, supra note 40.

41 FFVP Handbook, supra note 5, at 2.


43 Id.


See, e.g., 7 C.F.R. § 3016.60(b) (2012).

Farm-to-School FAQS — Procurement, Question 1, Food & Nutrition Serv., U.S. Dep’t of Agric., http://www.fns.usda.gov/cnd/f2s/faqs_procurement.htm (last updated Sept. 9, 2012) [hereinafter Farm-to-School FAQs].

Farm-to-School FAQs, supra note 71, Question 3.

Id.

Id.; 7 C.F.R. § 3016.36(d)(3) (2012).


Farm-to-School FAQs, supra note 71, Question 2.

Id.


See 7 C.F.R. §§ 3016.36(a), 3016.37(a), 3016.60(a); FNS Memo: Small Purchase Adjustment, supra note 72.


7 C.F.R. § 3016.36(d)(2) (2012).

7 C.F.R. § 3016.60 (2012); 7 C.F.R. §3016.4 (2012).


See Minn. Stat. §123B.52, subdiv. 1 (2011); FNS Memo: Small Purchase Adjustment, supra note 72.


See FNS Memo: Geographic Preference Q&As, supra note 86.


FNS Memo: Geographic Preference Q&As, supra note 86.

Id.

See Id.; FNS Memo: Applying Geographic Preferences, supra note 97.


7 C.F.R. § 250.56 (2012).


See, e.g., National School Lunch Program, 7 C.F.R. § 210.9(b)(15) (2012); School Breakfast Program, 7 C.F.R. § 220.7(e)(10) (2012); Summer Food Service Program, 7 C.F.R. § 225.6(e)(10) (2012).


See USDA White Paper, supra note 106, at 10–11.

Id. at 11.

Id. at 10–11.

Id. at 11.

Id. at 11.

7 C.F.R. § 250.15 (2012); see also USDA White Paper, supra note 106, at 10.

See USDA White Paper, supra note 106, at 11.

Id.

See 7 C.F.R. § 3016.36 (2012).


School Food Purchase Study, supra note 11, at 139.

7 C.F.R. § 250.30 (2012).


7 C.F.R. § 250.30(c) (2012).
131 7 C.F.R. § 250.30(b-e) (2012).
132 7 C.F.R. § 250.30(b) (2012).
137 DoD FFVP, supra note 50.
146 7 C.F.R. § 210.10 (b)-(c).
152 7 C.F.R. § 210.13(b) (2012); 7 C.F.R. § 220.7(a)(2) (2012).
7 C.F.R. § 210.13(c); 7 C.F.R. § 220.7(a)(3).


For more information, see The New FDA Food Safety Modernization Act (FSMA), Food & Nutrition Serv., U.S. Dep’t of Agric., http://www.fda.gov/food/foodsafety/fsma/default.htm (last updated Jan. 8, 2013).


Id. at 25.

Minn. Stat. ch. 28A (2012) (granting Minnesota Department of Agriculture authority to license food handlers and delegate authority to license food handlers to local boards of health).


Id.

Id.

Id.

Public Health Law Center, supra note 162, at 4.

SNDA Study IV, supra note 10, at 2–24.


Goossens, supra note 173.

MDE Guidance Document, supra note 127, at 4; Interview with Susan Bishop, Minn. Dep’t of Health (Jan. 23, 2013).
176 Goossens, supra note 173.

177 *MDE Guidance Document,* supra note 127.

178 Interview with Susan Bishop, Minn. Dep’t of Health (Jan. 23, 2013).


179 *Minn. Stat.* § 28A.05(c) (2011).

180 *Minn. Stat.* § 28A.05(b) (2011).


182 *School Food Purchase Study,* supra note 11, at 5.


186 *School Food Purchase Study,* supra note 11, at 7.

187 *Id.* at 5.

188 *Minnesota School Food Buying Group,* supra note 185.

189 Lazor, supra note 180.

190 *FNS Memo: Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations,* supra note 104.


195 *Minn. Stat.* § 123A.21, subdiv. 2.


MINN. STAT. § 123A.21, subdiv. 9 (2011).


204 Minnesota School Food Buying Group, supra note 189.


206 Personal communication with Minnesota school food service directors, Dec. 2011.

207 SNDA Study IV, supra note 10, at 2–24.


209 See, e.g., 7 C.F.R. § 210.16 (a) (2012).

210 7 C.F.R. § 210.16 (a)(1-10).


212 7 C.F.R. § 250.50(a) (2012).


217 Berkenkamp, supra note 216, at 3.


223 National Farm to School Network, supra note 222.


227 FRAC Commodity Report, supra note 112.

228 Id. at 41.

229 See USDA White Paper, supra note 111, at 7.

230 Id.


233 7 C.F.R. §250.57(e) (2012).


235 Public Health Law Center, supra note 162, at 3.


238 Personal communication with Minnesota food service directors. Dec. 2011.

239 Personal communication with Minnesota food directors (2011).


241 Lazor, supra note 180.
