

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

ssb-nsd-sep18item01

# California State Board of EducationSeptember 2018 AgendaItem #14

## Subject

Nutrition Guidelines for School Breakfast and Lunch: Approve Commencement of the Rulemaking Process for Amendments to the *California* *Code of Regulations*, Title 5
(5 *CCR*), Division 1, Chapter 15, Subchapter 1, Article 4 Sections 15551, 15558, 15559, and 15560.

## Type of Action

Action, Information

## Summary of the Issue(s)

The California Department of Education (CDE) is submitting proposed amended regulations on the nutrition guidelines for school breakfast and lunch, to align
5 *CCR,* Article 4 with current California *Education Code* Section 49531.1.

## Recommendation

The CDE is recommending that the State Board of Education (SBE) take the following actions:

* Approve the Notice of Proposed Rulemaking (Notice).
* Approve the Initial Statement of Reasons (ISOR).
* Approve the proposed amended regulations.
* Direct the CDE to commence the rulemaking process.
* Authorize the CDE to take any necessary action to respond to any direction or concern expressed by the Office of Administrative Law during its review of the Notice, ISOR, and proposed regulations.

## Brief History of Key Issues

In 1976, the SBE adopted Article 4 found in the 5 *CCR*, Division 1, Chapter 15, Subchapter 1. Article 4 created sections 15550–15565. Specifically, sections 15551, 15558, 15559, and 15560 provided definitions, nutrition guidelines, and meal pattern requirements for school lunches and breakfasts. Since 1976 and the adoption of Article 4, the following changes have occurred that affect Article 4 sections 15550–15565.

1. In 1976, Section 49531 was added to the California *Education Code* (*EC*). This *EC* section requires a child nutrition entity that receives federal and state funds to provide a nutritionally adequate breakfast or lunch, or both, in accordance with state and federal requirements. In addition, this *EC* section specified that lunch should meet one third of the Recommended Dietary Allowances established by the National Research Council. This *EC* section was last amended in 1997 to include the clarification that a breakfast meal should provide, at a minimum, one fourth of the current Recommended Dietary Allowances and for both breakfast and lunch, to incorporate the current *U.S. Dietary Guidelines for Americans*.
2. In 1989, Section 49531.1 was added to the *EC*. This *EC* section required the CDE to develop and maintain nutrition guidelines for school lunches and breakfasts, and for all food and beverages sold on public school campuses. *EC* Section 33031 provides that the SBE shall adopt rules and regulations that are not inconsistent with the laws of this state. Additionally these guidelines shall include guidelines for fat, saturated fat, and cholesterol, and specify that where comparable food products of equal nutritional value are available, the food product lower in fat, saturated fat, or cholesterol shall be used. This *EC* section also specified that these nutrition guidelines shall consider current recommendations for children from the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* (previously known as the *California Daily Food Guide*) published by the State Department of Health Services. Note that the *California Food Guide* was last revised in 2006 and does not reflect the most current *U.S. Dietary Guidelines for Americans*. The most current *U.S. Dietary Guidelines for Americans* is the 2015–2020 version. When reviewing and amending the regulations, the CDE considered the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* as required by *EC* Section 49531.1. The CDE did not adopt any recommendations from it because it is outdated.
3. In developing nutrition guidelines for school lunches and breakfasts, the CDE followed the most current U.S. Department of Agriculture (USDA) meal pattern requirements under 7 *Code of Federal Regulations* sections 210.10 and 220.8. In 2010 the Healthy, Hunger-Free Kids Act (HHFKA) was signed into federal law. This bill was part of the reauthorization of funding for Child Nutrition Programs and requires USDA to set new nutrition standards for schools. The HHFKA allowed USDA, for the first time in 30 years, the opportunity to reform the school lunch and breakfast programs. The new law requires updates to the meal patterns and nutrition standards for the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) and aligns them with the most current *U.S. Dietary Guidelines for Americans.* The nutrition standards in the NSLP and SBP final rule went into effect July 2012. The final rule requires most schools to increase the availability of fruits, vegetables, whole grains, and fat-free and low-fat fluid milk; reduce the levels of sodium, saturated fat and trans fat in meals; and to meet the nutrition needs of school children within a specified calorie range. The improvements to the school meal programs were largely based on recommendations made by the Institute of Medicine of the National Academies, and were to enhance the diet and health of school children, and help mitigate the childhood obesity trend. As stated above in item 2, the CDE considered but did not adopt recommendations from the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* because it is outdated.

In summary, the regulations found in Article 4 were created prior to the requirement of *EC* sections 49531 and 49531.1. The proposed regulations implement changes consistent with the objectives of *EC* sections 49531 and 49531.1 and with the Nutrition Standards in the National School Lunch and School Breakfast Programs Final Rule. (The final rule is located on the Federal Register web page at <https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs>.)

## Summary of Previous State Board of Education Discussion and Action

None

## Fiscal Analysis (as appropriate)

An Economic and Fiscal Impact Statement is provided as Attachment 4.

## Attachment(s)

* Attachment 1: Notice of Proposed Rulemaking (8 pages)
* Attachment 2: ISOR (7 pages)
* Attachment 3: Proposed Regulations (9 pages)
* Attachment 4: Economic and Fiscal Impact Statement (STD. 399) (5 pages)

**CA DEPARTMENT OF EDUCATION**

**TOM TORLAKSON**

State Superintendent of Public Instruction

**CA BOARD OF EDUCATION**

**MICHAEL W. KIRST**

President

**Attachment 1: NOTICE OF PROPOSED RULEMAKING**

AMENDMENT TO CALIFORNIA *CODE OF REGULATIONS*, TITLE 5, REGARDING NUTRITION GUIDELINES FOR SCHOOL BREAKFAST AND LUNCH

Notice published SEPTEMBER 21, 2018

**NOTICE IS HEREBY GIVEN** that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

***PUBLIC HEARING***

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at 8:30 a.m. on November 5, 2018, at 1430 N Street, Room 1103, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

***WRITTEN COMMENT PERIOD***

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Patricia Alverson, Regulations Coordinator

Administrative Support and Regulations Adoption Unit

California Department of Education

1430 N Street, Room 5319

Sacramento, CA 95814

Comments may also be submitted by FAX at 916-319-0155 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on November 5, 2018. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

***AVAILABILITY OF CHANGED OR MODIFIED TEXT***

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice

or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

***AUTHORITY AND REFERENCE***

Authority: California *Education Code* (*EC*) sections 33031, 49531, and 49531.1.

References: Title 7 *Code of Federal Regulation* (7 *CFR*) sections 210.10, 220.8, and 220.9,

***INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW***

In 1976, the SBE adopted Article 4 found in the California *Code of Regulation*, Title 5, Division 1, Chapter 15, Subchapter 1. Article 4 created sections 15550–15565. Specifically, sections 15551, 15558, 15559, and 15560 provided definitions, nutrition guidelines, and meal pattern requirements for school lunches and breakfasts. Since 1976 and the adoption of Article 4, the following changes have occurred that affect Article 4 sections 15550–15565.

1. In 1976, Section 49531 was added to the California *EC*. This *EC* section requires a child nutrition entity that receives federal and state funds to provide a nutritionally adequate breakfast or lunch, or both, in accordance with state and federal requirements. In addition, this *EC* section specified that lunch should meet one third of the Recommended Dietary Allowances established by the National Research Council. This *EC* section was last amended in 1997 to include the clarification that a breakfast meal should provide, at a minimum, one fourth of the current Recommended Dietary Allowances and for both breakfast and lunch, to incorporate the current *U.S. Dietary Guidelines for Americans*.
2. In 1989, Section 49531.1 was added to the *EC*. This *EC* section required the CDE to develop and maintain nutrition guidelines for school lunches and breakfasts, and for all food and beverages sold on public school campuses. *EC* Section 33031 provides that the SBE shall adopt rules and regulations that are not inconsistent with the laws of this state. Additionally these guidelines shall include guidelines for fat, saturated fat, and cholesterol, and specify that where comparable food products of equal nutritional value are available, the food product lower in fat, saturated fat, or cholesterol shall be used. This *EC* section also specified that these nutrition guidelines shall consider current recommendations for children from the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* (previously known as the *California Daily Food Guide*) published by the State Department of Health Services. Note that the *California Food Guide* was last revised in 2006 and does not reflect the most current *U.S. Dietary Guidelines for Americans*. The most current *U.S. Dietary Guideline for Americans* is the 2015–2020 version. When reviewing and amending the regulations, the CDE considered the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* as required by *EC* Section 49531.1. The CDE did not adopt any recommendations from it because it is outdated.
3. In developing nutrition guidelines for school lunches and breakfasts, the CDE followed the most current U.S. Department of Agriculture (USDA) meal pattern requirements under 7 *CFR* sections 210.10 and 220.8. In 2010 the Healthy, Hunger-Free Kids Act (HHFKA) was signed into federal law. This bill was part of the reauthorization of funding for Child Nutrition Programs and requires USDA to set new nutrition standards for schools. The HHFKA allowed USDA, for the first time in 30 years, the opportunity to reform the school lunch and breakfast programs. The new law requires updates to the meal patterns and nutrition standards for the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) and aligns them with the most current *U.S. Dietary Guidelines for Americans*. The nutrition standards in the NSLP and SBP final rule went into effect July 2012. The final rule requires most schools to increase the availability of fruits, vegetables, whole grains, and fat-free and low-fat fluid milk; reduce the levels of sodium, saturated fat and trans fat in meals; and to meet the nutrition needs of school children within a specified calorie range. The improvements to the school meal programs were largely based on recommendations made by the Institute of Medicine of the National Academies, and are to enhance the diet and health of school children, and help mitigate the childhood obesity trend. As stated above, in item 2, the CDE considered but did not adopt any recommendations from the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* because it is outdated.

In summary, the regulations found in Article 4 were created prior to the requirement of *EC* sections 49531 and 49531.1. The proposed regulations implement changes consistent with the objectives of *EC* sections 49531 and 49531.1 and with the Nutrition Standards in the National School Lunch and School Breakfast Programs Final Rule. (The final rule is located on the Federal Register web page at <https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs>.)

***Anticipated Benefits of the Proposed Regulation***

The anticipated benefits of the regulations are the effective and consistent implementation of statewide school nutrition standards. This impacts the nutrition and health of students that consume school meals. Research shows that low-income students who eat school meals have a significantly better overall diet quality than low-income students who do not eat school meals. Research also shows strong evidence linking healthy eating and well-nourished students with improved student academic achievement.

Updating the regulations regarding revised nutrition guidelines for foods and beverages served through school breakfast and lunch will:

* Provide balanced, healthy meals for school-age children that include updated nutrition guidance, such as the inclusion of fruits, vegetables, whole grains, plant-based protein foods, lean meats and low-fat dairy products
* Create alignment with the USDA NSLP and SBP nutrition standards
* Create alignment with the *2015-2020 U.S. Dietary Guidelines for Americans* nutrition standards
* Create alignment with the Institute of Medicine’s nutrition standards

***Determination of Inconsistency/Incompatibility with Existing State Regulations***

The CDE reviewed all state regulations relating to the school lunch and breakfast nutrition guidelines and meal pattern requirements and found that none exist that are inconsistent or incompatible with these regulations.

**INCORPORATION BY REFERENCE**

The proposed regulations incorporate by reference the Conflict of Interest Disclosure Statement. A copy of this form can be obtained by contacting the Regulations Coordinator or located at CDE’s website at <http://www.cde.ca.gov/re/lr/rr/>.

The USDA NSLP requirements are hereby incorporated by reference and can be found on the Electronic Code of Federal Regulations web page at

<https://www.ecfr.gov/cgi-bin/text-idx?SID=a63a8f22070e3fd5abd5613752669627&mc=true&node=se7.4.210_110&rgn=div8>.

The USDA SBP requirements are hereby incorporated by reference and can be found on the Electronic Code of Federal Regulations web page at

<https://www.ecfr.gov/cgi-bin/text-idx?SID=74c67a371cd1c7cba6cd56fe56f4c5f3&mc=true&node=se7.4.220_18&rgn=div8>.

The *2015–2020 U.S. Dietary Guidelines for Americans* are hereby incorporated by reference and can be found on the Office of Disease Prevention and Health Promotion Dietary Guidelines web page at

<https://health.gov/dietaryguidelines/2015/guidelines>.

The *USDA Food Buying Guide* is hereby incorporated by reference and can be found on the USDA Food Buying Guide web page at

[https://foodbuyingguide.fns.usda.gov](https://foodbuyingguide.fns.usda.gov/).

The *California Food Guide* is hereby incorporated by reference can be found on the California Department of Health Care Services publications web page at

<http://www.dhcs.ca.gov/formsandpubs/publications/Pages/CaliforniaFoodGuide.aspx>.

***DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT***

*The SBE has made the following initial determinations:*

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

The proposed regulations do not require a report to be made.

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary costs or savings imposed on local agencies, including local educational agencies: None

Costs or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on housing costs: None

Effect on small businesses: The proposed regulations may have a positive effect on small businesses because the possible expansion of products has the potential to create new products and food-related businesses that focus on providing items that meet the updated nutrition standards and meal pattern requirements. The required offerings of fruits and vegetables could provide increased economic benefits to small and local farmers.

*results of the Economic Impact Analysis*

The SBE concludes there is potential that these proposed regulations may: 1) create jobs within California; 2) create new businesses within California; or 3) expand businesses currently doing business within California.

Benefits of the Proposed Action: The proposed amended regulations will provide current meal patterns. The updated meal pattern expands the number and types of food items served to students. This may allow for additional jobs and businesses that provide foods and beverages meeting the standards for school meals. The SBE concludes that it is unlikely that these proposed regulations will: 1) eliminate jobs within California; or 2) eliminate existing businesses within California.

***CONSIDERATION OF ALTERNATIVES***

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

***CONTACT PERSONS***

Inquiries concerning the content of these proposed regulations should be directed to:

Michael Danzik, Nutrition Education Consultant

Nutrition Services Division

California Department of Education

1430 N Street, Suite 4503

Sacramento, CA 95814

Phone: 916-445-7346

Email: mdanzik@cde.ca.gov

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or the backup contact person, Hillary Wirick, Regulations Analyst, by phone at 916-319-0860.

***INITIAL STATEMENT OF REASONS AND INFORMATION***

The SBE has prepared an Initial Statement of Reasons for the proposed regulation and has available all the information upon which the proposal is based.

***TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS***

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE’s Proposed Rulemaking and Regulations web page at <http://www.cde.ca.gov/re/lr/rr/> .

***AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE***

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

***REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY***

Pursuant to the *Rehabilitation Act of 1973,* the *Americans with Disabilities Act of 1990,* and the *Unruh Civil Rights Act,* any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Michael Danzik, Nutrition Services Division,
1430 N Street, Suite 4503, Sacramento, CA, 95814 by phone at 916-445-7346 or by email at mdanzik@cde.ca.gov. It is recommended that assistance be requested at least two weeks prior to the hearing.

**Attachment 2: INITIAL STATEMENT OF REASONS**

Nutrition Guidelines for School Breakfast and Lunch

## INTRODUCTION

In 1976, the California State Board of Education (SBE) adopted Article 4 found in the *California Code of Regulation*, Title 5 (5 *CCR*), Division 1, Chapter 15, Subchapter 1. Article 4 created sections 15550–15565. Specifically, sections 15551, 15558, 15559, and 15560 provided definitions, nutrition guidelines, and meal pattern requirements for school lunches and breakfasts. Since 1976 and the adoption of Article 4, the following changes have occurred that affect Article 4 sections 15550–15565.

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2. In 1989, Section 49531.1 was added to the *EC*. This *EC* section required the California Department of Education (CDE) to develop and maintain nutrition guidelines for school lunches and breakfasts, and for all food and beverages sold on public school campuses. *EC* Section 33031 provides that the SBE shall adopt rules and regulations that are not inconsistent with the laws of this state. Additionally these guidelines shall include guidelines for fat, saturated fat, and cholesterol, and specify that where comparable food products of equal nutritional value are available, the food product lower in fat, saturated fat, or cholesterol shall be used. This *EC* section also specified that these nutrition guidelines shall consider current recommendations for children from the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* (previously known as the *California Daily Food Guide*) published by the State Department of Health Services. Note that the *California Food Guide* was last revised in 2006 and does not reflect the most current dietary guidelines for Americans. The most current *U.S. Dietary Guideline for Americans* is the 2015–2020 version. When reviewing and amending the regulations, the CDE considered the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* as required by *EC* Section 49531.1. The CDE did not adopt any recommendations from it because it is outdated.
3. In developing nutrition guidelines for school lunches and breakfasts, the CDE followed the most current U.S. Department of Agriculture (USDA) meal pattern requirements under 7 *Code of Federal Regulations* sections 210.10 and 220.8. In 2010 the Healthy, Hunger-Free Kids Act (HHFKA) was signed into federal law. This bill was part of the reauthorization of funding for Child Nutrition Programs and requires USDA to set new nutrition standards for schools. The HHFKA allowed USDA, for the first time in 30 years, the opportunity to reform the school lunch and breakfast programs. The new law requires updates to the meal patterns and nutrition standards for the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) and aligns them with the most current *U.S. Dietary Guidelines for Americans*. The nutrition standards in the NSLP and SBP final rule went into effect July 2012. The final rule requires most schools to increase the availability of fruits, vegetables, whole grains, and fat-free and low-fat fluid milk; reduce the levels of sodium, saturated fat and trans fat in meals; and to meet the nutrition needs of school children within a specified calorie range. The improvements to the school meal programs were largely based on recommendations made by the Institute of Medicine of the National Academies, and are to enhance the diet and health of school children, and help mitigate the childhood obesity trend. As stated above in item 2, the CDE considered but did not adopt any recommendations from the *California Food Guide: Fulfilling the Dietary Guidelines for Americans* because it is outdated.

In summary, the regulations found in Article 4 were created prior to the requirement of *EC* sections 49531 and 49531.1. The proposed regulations implement changes consistent with the objectives of *EC* sections 49531 and 49531.1 and with the Nutrition Standards in the National School Lunch and School Breakfast Programs Final Rule. (The final rule is located on the Federal Register web page at <https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs>.)

## PROBLEM AGENCY INTENDS TO ADDRESS

*EC* Section 49531.1 requires the CDE to develop and maintain nutrition guidelines for school lunches and breakfasts and shall include guidelines for fat, saturated fat, and cholesterol. In addition, the nutrition guidelines shall specify that where comparable items of equal nutritional value are available the food lower in fat, or saturated fat, or cholesterol shall be used. The proposed regulations implement these changes, which are consistent with the objectives of *EC* Section 49531.1.

## BENEFITS ANTICIPATED FROM REGULATORY ACTION

The anticipated benefits of the regulations are the effective and consistent implementation of statewide school nutrition standards. This impacts the nutrition and health of students that consume school meals. Research shows that low-income students who eat school meals have a significantly better overall diet quality than low-income students who do not eat school meals. Research also show strong evidence linking healthy eating and well-nourished students with improved student academic achievement.

Updating the regulations regarding revised nutrition guidelines for foods and beverages served through school breakfast and lunch will:

* Provide balanced, healthy meals for school-age children that include updated nutrition guidance, such as the inclusion of fruits, vegetables, whole grains, plant-based protein foods, lean meats and low-fat dairy products
* Create alignment with the USDA NSLP and SBP nutrition standards
* Create alignment with the *2015-2020 U.S. Dietary Guidelines for Americans* nutrition standards
* Create alignment with the Institute of Medicine’s nutrition standards

## SPECIFIC PURPOSE OF EACH SECTION – GOV. CODE SECTION 11346.2(b)(1)

The specific purpose of each adoption or amendment, and the rationale for the determination that each adoption or amendment is reasonably necessary to carry out the purpose of which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption or amendment is intended to address, is as follows:

General changes were made to the regulations to include grammatical edits, and renumbering or relettering to reflect deletions or additions.

## SECTION 15551

**Section 15551(b)** is amended by updating the definition of “breakfast program” by deleting the terms “basic breakfast” and “special breakfast.” This is necessary to align with current *EC* Section 49531.

**Section 15551(c)**, **formerly Section 15551(g)** is amended by updating the definition of “child nutrition entity” to align with *EC* Section 49530.5.

**Section 15551(e)**, **formerly Section 15551(h)** is amended to refer to the California Department of Education as “Department” for consistency of its use in these regulations.

**Former Section 15551(e)** is deleted because this definition refers to a meal pattern outlined in Section 15560. Section 15560 is deleted in this rulemaking package because it includes an outdated and inaccurate school meal pattern and does not include current requirements outlined in the HHFKA.

**Former Section 15551(f)** is deleted because this definition refers to a reimbursement method outlined in Section 15560. Section 15560 is deleted in this rulemaking package because it contains language regarding meal reimbursement that is already covered in the USDA’s federal regulations under 7 *Code of Federal Regulations* Section 220.9.

**Section 15551(g)**, **formerly Section 15551(d)** is amended by replacing the term “basic breakfast” with the term “nutritionally adequate breakfast.” This is necessary to align with current *EC* Section 49531. The term “nutritionally adequate breakfast” aligns with the requirements pursuant to Section 15559 as stated in the definition.

**Section 15551(h), formerly Section 15551(c)** is amended by deleting the term “nutritionally adequate breakfast.” This is necessary because the term “nutritionally adequate breakfast” is now defined in the proposed Section 15551(g) pursuant to Section 15559. “Nutritionally adequate lunch” remains as it aligns with the requirements pursuant to Section 15558 as stated in its definition.

## SECTION 15558

The title of this section is amended by deleting the phrase “or Breakfast.” This is necessary because Section 15558 now only refers to the requirements for a nutritionally adequate lunch while Section 15559 now refers to a nutritionally adequate breakfast.

**Section 15558(a)** is amended to include the current USDA NSLP meal pattern requirements.

**Former Sections 15558(b)–(e)** are deleted. This is necessary because subsections
b–e contained outdated school meal pattern standards and do not include current requirements outlined in the HHFKA.

**Proposed Section 15558(b)** is added to address guidelines for controlling the intake of total fat and cholesterol as required by *EC* Section 49531.1. These guidelines reflect NSLP requirements for trans fat and saturated fat. The proposed section also includes guidelines for avoiding solid fats and choosing low-fat or plant-based foods as directed by the *2015–2020 U.S. Dietary Guidelines for Americans*. This is necessary because the current Section 15558(b) contains outdated and inaccurate school meal pattern requirements.

**Proposed Section 15558(c**) is added to address choosing the healthier option when available as required by *EC* Section 49531.1.

## SECTION 15559

The title of this section is amended by replacing the word “Basic” with the term “Nutritionally Adequate” when referring to breakfast. This is necessary to align with *EC* Section 49531.

**Section 15559(a)** is amended by replacing the term “basic breakfast” with “nutritionally adequate breakfast.” This is necessary to align with current *EC* Section 49531. Section 15559(a) is further amended with the current USDA SBP meal pattern requirements. This is necessary because the current Section 15559(a) contained outdated and now inaccurate school meal pattern requirements.

**Section 15559(b)** is amended by deleting the former Section 15559(b) and replacing it with guidelines for controlling the intake of total fat and cholesterol as required by *EC* Section 49531.1. The proposed amendment provides guidelines that reflect SBP requirements for trans fat and saturated fat. The proposed amendment also includes guidelines for avoiding solid fats and choosing low-fat or plant-based foods as directed by the *2015–2020 U.S. Dietary Guidelines for Americans*. This is necessary because the current Section 15559(b) contains outdated and inaccurate school meal pattern requirements.

**Proposed Section 15559(c)** is added to address choosing the healthier option when available as required by *EC* Section 49531.1.

## SECTION 15560

**Section 15560** is deleted because this section contained outdated school meal pattern standards and did not include current requirements outlined in the HHFKA. This section also contained language regarding increased meal reimbursement for breakfast that is already covered in the USDA’s federal regulations under 7 *Code of Federal Regulations* Section 220.9.

## ECONOMIC IMPACT ASSESSMENT PER GOV. CODE SECTION 11346.3(b)

### *Purpose:*

The amended regulations are necessary for state implementation of *EC* Section 49531.1, and for the effective and consistent administration statewide of school nutrition standards and meal pattern requirements.

### *Creation or Elimination of Jobs within the State of California:*

The amended regulations provide updated nutrition standards and meal pattern requirements and will not eliminate any jobs that already exist. There is the potential to create additional jobs due to the likely increase in preparing foods from scratch.

### *Creation of New or Elimination of Existing Businesses within the State of California:*

The regulations are designed to update and clarify current school lunch and breakfast nutrition standards. Adoption of the amended regulations will expand on the variety of allowable foods. The possible expansion of products has the potential to create new products and food-related businesses within the State of California that focus on providing items that meet the updated nutrition standards and meal pattern requirements. There is also the potential to better support the local economies through local purchases.

### *Expansion of Businesses or Elimination of Businesses Currently Doing Business within the State of California:*

The regulations are designed to update and clarify current school lunch and breakfast nutrition standards. Adoption of the amended regulations will expand on the variety of allowable foods. These changes allow existing business within the State of California the opportunity to expand their current product lines by focusing on providing items that meet the updated nutrition standards and meal pattern requirements.

### *Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:*

These proposed regulations will have no adverse effect nor benefit on worker safety or the State’s environment.

The anticipated benefits of the regulations are the effective and consistent implementation of statewide school nutrition standards. This impacts the nutrition and health of students that consume school meals. There is strong evidence linking healthy eating and well-nourished students with improved academic achievement. Students spend much of their time at school and may eat as many as two or three meals per day at school. Therefore, school meals may contribute to the overall health and wellness of the students.

## INCORPORATED BY REFERENCE

The USDA NSLP requirements are hereby incorporated by reference and can be found on the Electronic Code of Federal Regulations web page at

<https://www.ecfr.gov/cgi-bin/text-idx?SID=a63a8f22070e3fd5abd5613752669627&mc=true&node=se7.4.210_110&rgn=div8>.

The USDA SBP requirements are hereby incorporated by reference and can be found on the Electronic Code of Federal Regulations web page at

<https://www.ecfr.gov/cgi-bin/text-idx?SID=74c67a371cd1c7cba6cd56fe56f4c5f3&mc=true&node=se7.4.220_18&rgn=div8>.

The *2015–2020 U.S. Dietary Guidelines for Americans* are hereby incorporated by reference and can be found on the Office of Disease Prevention and Health Promotion Dietary Guidelines web page at

<https://health.gov/dietaryguidelines/2015/guidelines>.

The *USDA Food Buying Guide* is hereby incorporated by reference and can be found on the USDA Food Buying Guide web page at

[https://foodbuyingguide.fns.usda.gov](https://foodbuyingguide.fns.usda.gov/).

The *California Food Guide* is hereby incorporated by reference can be found on the California Department of Health Care Services publications web page at

<http://www.dhcs.ca.gov/formsandpubs/publications/Pages/CaliforniaFoodGuide.aspx>.

## OTHER REQUIRED SHOWINGS

### Studies, Reports or Documents Relied Upon – Gov. Code. Section 11346.2(b)(3):

The SBE did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption, amendment, or repeal of these regulations.

### Reasonable Alternatives Considered or Agency’s Reasons for Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(5)(A):

No other alternatives were presented to or considered by the SBE.

### Reasonable Alternatives that Would Lessen the Impact on Small Businesses – Gov. Code Section 11346.2(b)(5)(B):

The SBE has not identified any alternatives that would lessen any adverse impact on small business.

### Evidence Relied Upon to Support the Initial Determination that the Regulations Will Not Have a Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(5)(A):

The proposed regulations would not have a significant adverse economic impact on any business because the amendments do not affect the private sector.

### Analysis of Whether the Regulations are an Efficient and Effective Means of Implementing the Law in the Least Burdensome Manner – Gov. Code Section 11346.3(e)

The proposed regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.

An evaluation of the proposed regulations have determined they are not inconsistent/incompatible with existing regulations, pursuant to *Government Code* Section 11346.5(a)(3)(D).

07-23-18 [California Department of Education]

* The State Board of Education has illustrated changes to the original text in the following manner: text originally proposed to be added is underlined; text proposed to be deleted is displayed in ~~strikeout~~.

# Attachment 3:

## Title 5. EDUCATIONDivision 1. California Department of Education

**Chapter 15. Child Nutrition Programs
Subchapter 1. Food Sales, Food Service, and Nutrition Education**

**Article 4. School Lunch and Breakfast Programs**

**§ 15551. Definitions.**

As used in this article:

 (a)~~(i)~~ “Agreement” means the School Lunch Program Application-Agreement or the School Breakfast Program Application-Agreement between the child nutrition entity and the ~~CDE~~California Department of Education for operation of a school lunch and/or breakfast program.

 (b) “Breakfast ~~P~~program” means a program operated by a child nutrition entity to provide pupils with ~~any of the following: nutritionally adequate breakfast,~~ a ~~basic~~ nutritionally adequate breakfast~~, special breakfast~~.

 (c)~~(g)~~ “Child ~~N~~nutrition ~~E~~entity” means any school district, county superintendent of schools, ~~private school, parochial school, local agency,~~ or child development program operated pursuant to ~~C~~chapter 2 (commencing with section 8200) or chapter 2.5 (commencing with section 8400) of ~~P~~part 6 of division 1 of title 1 of the Education Code and local agency, private school, or parochial school, or any other agency which qualifies for federal aid under the federal school lunch program or the federal child nutrition program prescribed, respectively, by chapter 13 (commencing with section 1751) and chapter 13A (commencing with section 1771) of title 41 of the United States Code.~~eligible to participate in child nutrition programs authorized by the National School Lunch Act and/or the Child Nutrition Act of 1966, as amended.~~

 (d)~~(j)~~ “Child ~~N~~nutrition ~~P~~program” means any program authorized by state law, the National School Lunch Act or the Child Nutrition Act of 1966.

 (e)~~(h)~~ “Department~~CDE~~” means the California Department of Education.

 (f)~~(a)~~ “Lunch ~~P~~program” means a program operated by a child nutrition entity to provide pupils with a nutritionally adequate lunch.

 (g)~~(d)~~ “~~Basic~~Nutritionally adequate ~~B~~breakfast” means a breakfast ~~which~~that meets or exceeds minimum food and nutrition requirements pursuant to section 15559.

 (h)~~(c)~~ “Nutritionally ~~A~~adequate ~~Ll~~unch ~~or Nutritionally Adequate Breakfast~~” means a lunch ~~or breakfast which~~ that meets or exceeds minimum food and nutrition requirements pursuant to section 15558.

 ~~(e)~~ “~~Special Breakfast” means a breakfast~~ ~~which meets or exceeds minimum food and nutrition requirements pursuant to section 15560 and~~ ~~which provides eligibility to the child nutrition entity for increased reimbursement when offered in especially needy~~ ~~schools~~.

 ~~(f)~~ “~~Especially Needy School” means a school which meets eligibility criteria established by the California Department of Education (CDE) and which may receive increased reimbursement for special breakfasts.~~

NOTE: Authority cited: Sections 33031 and 49531, Education Code. Reference: 7 C.F.R sections 210.10 and 220.8.

**§ 15558. Requirements for Nutritionally Adequate Lunch ~~or Breakfast~~**

1. A nutritionally adequate lunch shall contain components that meet the U.S. Department of Agriculture (USDA) National School Lunch Program requirements for a five-day school week, as set forth in the following tables:

[Note to Publisher: Adopt this table to amend section 15558]

Amount of Fooda per Week (Minimum per Day)

| Food | Grades K–5 | Grades 6–8 | Grades 9–12 |
| --- | --- | --- | --- |
| Fruits (cups)b | 2 ½ (½) | 2 ½ (½) | 5(1) |
| Vegetables (cups)b | 3 ¾ (¾) | 3 ¾ (¾) | 5(1) |
|  Dark Greenc | ½ | ½ | ½ |
|  Red/Orangec | ¾ | ¾ | 1 ¼  |
|  Beans/Peas (Legumes)c | ½ | ½ | ½ |
|  Starchyc | ½ | ½ | ½ |
|  Other Vegetablesc,d | ½ | ½ | ¾ |
| Additional Vegetables to Reach Totale | 1 | 1 | 1 ½  |
| Grains (ounce equivalents)f | 8-9 (1)\* | 8-10 (1)\* | 10-12 (2)\* |
| Meats/Meat Alternatives (ounce equivalents)f | 8-10 (1)\* | 9-10 (1) \* | 10-12 (2)\* |
| Fluid milk (cups)g | 5 (1) | 5 (1) | 5 (1) |

\* U.S. Department of Agriculture has lifted the weekly maximums for grain and meat/meat alternates. The daily and weekly minimums for grains and meat/meat alternates still apply. The maximum are used as a guide for menu planning purposes only.

a Food items included in each group and subgroup and amount equivalents as outlined in the U.S. Department of Agriculture’s Food Buying Guide.

b One quarter cup of dried fruit counts as one half cup of fruit; one cup of leafy greens counts as one half 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 percent full-strength. The minimum creditable serving for a fruit or vegetable is at least one eighth cup.

c Larger amounts of these vegetables may be served.

d This category consists of “Other Vegetables” as defined in 7 Code of Federal Regulations section 210.10(c)(2)(iii)(E). For the purposes of the National School Lunch Program, the “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 7 Code of Federal Regulations section 210.10(c)(2)(iii).

e Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

f All grains must be whole grain-rich. The minimum creditable serving for a grain, a meat, or a meat alternate is at least one quarter ounce equivalent.

g All fluid milk must be low-fat or fat-free.

[Note to Publisher: Adopt this table to amend section 15558]

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

| Dietary Specifications | Grades K–5 | Grades 6–8 | Grades 9–12 |
| --- | --- | --- | --- |
| Min-Max Calories (kcal)h | 550-650 | 600-700 | 750-850 |
| Saturated Fat (percent of total calories)h | Less than 10 percent | Less than 10 percent | Less than 10 percent |
| Sodium (milligrams)h | Less than 1,230 mg | Less than 1,360 mg | Less than 1,420 mg |
| Trans Fath | Nutrition label of manufacturer specifications must indicate zero grams of trans fat per serving | Nutrition label of manufacturer specifications must indicate zero grams of trans fat per serving | Nutrition label of manufacturer specifications must indicate zero grams of trans fat per serving |

h 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. Fluid milk with fat content greater than one percent milk fat is not allowed.

 (b) Guidelines for total fat and cholesterol are as follows:

(1) In order to control overall intake of total fat and cholesterol, schools:

(i) shall not serve foods or beverages containing 0.5 grams or more of trans fat per serving;

(ii) shall stay within the calorie ranges as an average over the week;

(iii) shall avoid solid fats when possible; and

(iv) shall choose lean meats, substitute meats for beans, peas, and lentils, and choose low-fat or nonfat dairy products when possible.

 (c) Where comparable food products of equal nutritional value are available, the food product lower in fat, or saturated fat, or cholesterol shall be used.

~~or a nutritionally adequate breakfast shall contain, as a minimum, each of the following food components in the amount indicated as modified for age level pursuant to Section 15561:~~

~~(a) One-half pint of fresh, fluid milk as a beverage or on cereal or used in part for each purpose.~~

~~(b) Two ounces of lean meat, poultry, fish, or cheese; or one egg; or one-half cup of cooked dry beans or peas, or 4 tablespoons of peanut butter; or any equivalent quantity of any combination of the above listed foods or acceptable alternates. To be counted in meeting this requirement, such foods shall be served as a main dish or as part of a main dish plus one other menu item.~~

~~(c) Three-fourths cup of two or more vegetables or fruits, or both. Full-strength vegetable or fruit juice may be counted to meet not more than one-fourth cup of this requirement.~~

~~(d) One slice of whole grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, tortillas, or acceptable alternates, made of whole grain or enriched flour or meal; or three-fourths cup or one-ounce serving of whole grain cereal or enriched or fortified cereal; or any equivalent quantity of any combination of these foods.~~

~~(e) One teaspoon of butter or fortified margarine.~~

NOTE: Authority cited: Sections 33031, 49531, and 49531.1 Education Code. Reference: 7 C.F.R. section 210.10.

**§ 15559. Requirements for ~~Basic~~ Nutritionally Adequate Breakfast.**

1. A ~~basic~~ nutritionally adequate breakfast shall contain components that meet the USDA School Breakfast Program requirement for a five-day school week, as set forth in the following tables:

~~as a minimum, each of the following food components in the amount indicated as modified for age level pursuant to Section 15561:~~

 [Note to Publisher: Adopt this table to amend section 15559]

Amount of Fooda per Week (Minimum per Day)

| Food | Grades K–5 | Grades 6–8 | Grades 9–12 |
| --- | --- | --- | --- |
| Fruits (cups)b,c | 5 (1) | 5 (1) | 5 (1) |
| Vegetables (cups)b,c | 0 | 0 | 0 |
| Grains (ounce equivalents)d | 7-10 (1)\* | 8-10 (1)\* | 9-10 (2)\* |
| Meats/Meat Alternatives (ounce equivalents)d | 0 | 0 | 0 |
| Fluid milk (cups)g | 5 (1) | 5 (1) | 5 (1) |

\* U.S. Department of Agriculture has lifted the weekly maximums for grains. The daily and weekly minimums for grains and the weekly calorie ranges still apply. The maximums are used as a guide for menu planning purposes only.

a Food items included in each group and subgroup and amount equivalents as outlined in the U.S. Department of Agriculture’s Food Buying Guide.

b One quarter cup of dried fruit counts as one half cup of fruit; one cup of leafy greens counts as one half cup of vegetables. All juice must be 100 percent full-strength. Frozen 100 percent juice without added sugar can be used. The minimum creditable serving for a fruit or vegetable is at least one eighth cup.

c 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 7 Code of Federal Regulations section 210.10(c)(2)(iii).

d All grains must be whole grain-rich. Schools may substitute one ounce equivalent of meat/meat alternate for one ounce equivalent of grains after the minimum daily grains requirement is met. Meat/meat alternates may be offered as extra food items that do not count toward the grain component or as food items for Offer Versus Serve. These extra food items need to be included in the weekly calories, sodium, and saturated fat. The minimum creditable serving for a grain, a meat, or a meat alternate is at least one quarter ounce equivalent.

e There is no meat/meat alternate requirement.

f All fluid milk must be low-fat or fat-free.

g The average daily calories for a five-day school week must be within the range (at least the minimum and no more than the maximum values).

[Note to Publisher: Adopt this table to amend section 15559]

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

| Dietary Specifications | Grades K–5 | Grades 6–8 | Grades 9–12 |
| --- | --- | --- | --- |
| Min-Max Calories (kcal)h | 350-500 | 400-550 | 450-600 |
| Saturated Fat (percent of total calories)h | Less than 10 percent | Less than 10 percent | Less than 10 percent |
| Sodium (milligrams)h | Less than 540 mg | Less than 600 mg | Less than 640 mg |
| Trans Fath | Nutrition label of manufacturer specifications must indicate zero grams of trans fat per serving | Nutrition label of manufacturer specifications must indicate zero grams of trans fat per serving | Nutrition label of manufacturer specifications must indicate zero grams of trans fat per serving |

h 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. Fluid milk with fat content greater than one percent milk fat is not allowed.

 (b) Guidelines for total fat and cholesterol are as follows:

(1) In order to control overall intake of total fat and cholesterol, schools:

(i) shall not serve foods or beverages containing 0.5 grams or more of trans fat per serving;

(ii) shall stay within the calorie ranges as an average over the week;

(iii) shall avoid solid fats when possible; and

(iv) shall choose lean meats, substitute meats for beans, peas, and lentils, and choose low-fat or nonfat dairy products when possible.

 (c) Where comparable food products of equal nutritional value are available, the food product lower in fat, or saturated fat, or cholesterol shall be used.

 ~~(1) One-half pint of fresh, fluid milk served as a beverage or on cereal or used in part for each purpose.~~

 ~~(2) One-half cup serving of fruit or full strength fruit or vegetable juice, or combination thereof.~~

 ~~(3) One slice of whole grain or enriched bread; or an acceptable alternate, made of whole grain or enriched meal or flour; or three-fourths cup or one-ounce serving of whole grain cereal or enriched or fortified cereal; or an equivalent quantity of any combination of these foods.~~

 ~~(b) Approved formulated grain fruit products, when served with 1/2 pint milk, constitutes a reimbursable breakfast when the use of regular food components is not possible.~~

NOTE: Authority cited: Sections 33031, 49531, and 49531.1 Education Code. Reference: 7 C.F.R. section 220.8.

**~~§ 15560. Requirements for Special Breakfast.~~**

~~A child nutrition entity providing a special breakfast shall be eligible for increased reimbursement when such breakfast is served in especially needy schools as determined by the Department.~~ ~~The breakfast shall contain, in addition to all components of the basic breakfast as specified in Section 15559: one ounce serving of meat, poultry, fish, cheese, or egg; or two tablespoons of peanut butter; or an equivalent combination of such foods. Each meal shall also contain at least one Vitamin C-rich food. This requirement may be modified for age level pursuant to Section 15561.~~

07-17-18 [California Department of Education]