**CA DEPARTMENT OF EDUCATION**

**TONY THURMOND**
State Superintendent of Public Instruction

**CA STATE BOARD OF EDUCATION**

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Vice President

MARCH 15, 2019

# 45-DAY NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS REGARDING NUTRITION GUIDELINES FOR SCHOOL BREAKFAST AND LUNCH

Pursuant to the requirements of California *Government Code*, *S*ection 11346.8(c), and *California Code of Regulations (CCR)*, Title 1, Section 44, the State Board of Education (SBE) is providing notice of changes made to the above-referenced proposed regulation text which was the subject of a regulatory hearing on November 5, 2018.

## CHANGES TO THE TEXT:

Proposed Section 15558(a) is amended. This is necessary because on December 12, 2018 the U.S. Department of Agriculture (USDA) published its Final Rule titled *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium* which can be found on the Federal Register web page at https://www.federalregister.gov/documents/2018/12/12/2018-26762/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements. The Final Rule makes changes to grain requirements in footnote “f” which now requires at least half of the grains offered weekly must be whole grain-rich. The Final Rule makes changes to footnote “g,” which now allows for one-percent flavored milk to be offered during meal service, provided that unflavored milk is also offered at each meal service. The Final Rule retains the Target 1 sodium requirement until June 30, 2024 at which time the stricter, Target 2, sodium requirements will become effective.

Formerly Proposed Section 15558(b) is deleted. This is necessary because California *Education Code* (*EC*) 49531.1 was amended on September 20, 2018, through Assembly Bill (AB) 3043 which deleted the requirement for the state nutrition guidelines for school lunches to include guidelines for fat, saturated fat, and cholesterol.

Formerly Proposed Section 15558(c) is deleted. This is necessary because *EC* 49531.1 was amended on September 20, 2018, through AB 3043 which deleted the requirement for the state nutrition guidelines for school lunches to include guidelines that specify that where comparable food products of equal nutritional value are available, the food product lower in fat, or saturated fat, or cholesterol shall be used.

Proposed Section 15559(a) is amended. This is necessary because a public commenter found discrepancies in the footnote lettering in the table labeled, “Amount of Food per Week,” and subsequent descriptions for that footnote. The “Meats/Meat Alternatives” footnote in the table was mislettered “d” and is proposed to be changed to “e” to coincide with the correct footnote. The “fluid milk” footnote in the table labeled, “Other Specifications: Daily Amount Based on the Average for a 5-Day Week,” was mislettered “g” and is proposed to be changed to “f” to coincide with the correct footnote. Footnote “g” is proposed to be added to this table for “Min-Max Calories” and moved for correct placement.

Additionally, on December 12, 2018, the USDA published their Final Rule titled *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium* which can be found at <https://www.federalregister.gov/documents/2018/12/12/2018-26762/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements>. The Final Rule makes changes to grain requirements in footnote “d” which now requires at least half of the grains offered weekly must be whole grain-rich. The Final Rule makes changes to footnote “f” which now allows for one-percent flavored milk to be offered during meal service, provided that unflavored milk is also offered at each meal service. The Final Rule retains the Target 1 sodium requirement until June 30, 2024 at which time the stricter, Target 2, sodium requirements will become effective.

Formerly Proposed Section 15559(b) is deleted. This is necessary because *EC* 49531.1 was amended on September 20, 2018, through AB 3043 which deleted the requirement for the state nutrition guidelines for school breakfasts to include guidelines for fat, saturated fat, and cholesterol.

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## 45-DAY PUBLIC COMMENT PERIOD

Due to the changes to the proposed regulation text are sufficiently related to the regulation text originally noticed on September 21, 2018, as defined in *CCR,* Title 1, Section 42, the SBE is hereby accepting public comments for 45 days, from March 15, 2019, to April 29, 2019, inclusive. All written comments must be submitted to the Regulations Coordinator by fax at 916-319-0155; by email at regcomments@cde.ca.gov; or by mail and received at the following address by close of business at 5 p.m. on April 29, 2019, and addressed to:

Patricia Alverson, Regulations Coordinator

Legal, Audits and Compliance Branch

Administrative Supports and Regulations Adoption Unit

California Department of Education

1430 N Street, Suite 5319

Sacramento, CA 95814

All written comments received by 5 p.m. on April 29, 2019, which pertain to the indicated changes will be reviewed and responded to by California Department of Education (CDE) staff as part of the compilation of the rulemaking file. Written comments received by the CDE staff during the public comment period are subject to viewing under the Public Records Act.

## PUBLIC HEARING

CDE staff, on behalf of the SBE, will hold a public hearing at 8:30 a.m. on April 29, 2019, 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.

## 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.

**Please note:** Any written comments are to be restricted to the recent modifications as shown in the enclosed language. The SBE is not required to respond to comments received in response to this notice on other aspects of the proposed regulation.

02-21-19 [California Department of Education]