

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

ssb-nsd-sept19item01

# California State Board of EducationSeptember 2019 AgendaItem #07

## Subject

Nutrition Guidelines for School Breakfast and Lunch—Adoption of Proposed 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)

At its March 2019 meeting, the State Board of Education (SBE) approved the changes to the proposed regulations regarding Nutrition Guidelines for School Breakfast and Lunch, 5 *CCR*, sections 15551, 15558, 15559, and 15560, and directed the California Department of Education (CDE) to issue a notice of these amended changes for a second 45-day public comment period. Six public comments were received during this public comment period. Although five of these comments did not address these amended changes, one did. Thus, this comment is considered relevant, even though it did not result in any substantive change to the regulations. Pursuant to California *Government Code* Section 11346.8(a), the CDE is submitting the public comments included in the Addendum to the Final Statement of Reasons (Attachment 3) to the SBE so that the SBE consider all relevant comments presented to it before adopting the regulations.

The proposed changes intend to align 5 *CCR*, Chapter 15, Article 4 with current California *Education Code* (*EC*) sections 49531 and 49531.1, and Title 7, *Code of Federal Regulations* (7 *CFR*), sections 210.10 and 220.8. Assembly Bill 3043 (Berman) was signed into law on September 20, 2018, which amended *EC* sections 49531 and 49531.1. The U.S. Department of Agriculture (USDA) published a Final Rule titled *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium* on December 12, 2018, which amends requirements for milk, whole grains, and sodium in the school meal programs under 7 *CFR*, sections 210.10 and 220.8. Chapter 15, Article 4 in
5 *CCR*, specifically sections 15558 and 15559, now require additional changes due to the amended *EC* sections 49531 and 49531.1, and amended USDA regulations.

## Recommendation

The CDE recommends the SBE take the following actions:

* Adopt the proposed regulations (Attachment 1) and direct the CDE to submit the final rulemaking to the OAL.
* Authorize the CDE to take any necessary ministerial action to respond to any direction or concern expressed by the OAL during its review of the rulemaking file.

## Brief History of Key Issues

At its March 2019 meeting, the SBE was provided a history of key issues which can be found under Item 13 of the SBE March 2019 Agenda. This item can be found on the SBE March 2019 web page <https://www.cde.ca.gov/be/ag/ag/yr19/agenda201903.asp>.

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

At its September 2018 meeting, the SBE approved the commencement of the rulemaking process for the proposed nutrition regulations which can be found under Item 14 of the SBE September 2018 Agenda. This item can be found on the SBE September 2018 Agenda web page <https://www.cde.ca.gov/be/ag/ag/yr18/agenda201809.asp>.

At its March 2019 meeting, the SBE adopted the changes to the proposed regulations and directed the CDE to circulate the proposed changes for a 45-day comment period which can be found under Item 13 of the SBE March 2019. This item can be found on the SBE March 2019 Agenda web page <https://www.cde.ca.gov/be/ag/ag/yr19/agenda201903.asp>.

## Fiscal Analysis

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

## Attachment(s)

Attachment 1: Proposed Regulations (11 pages)

Attachment 2: Final Statement of Reasons (5 pages)

Attachment 2a: First 45-Day Public Comment Period: Summary of Public Comments
(5 pages)

Attachment 2b: Appendix of Public Comments Received During First 45-day Public Comment Period from September 21, 2018 through November 5, 2018 (1 page)

Attachment 3: Addendum to the Final Statement of Reasons (6 pages)

Attachment 3a: Public Comments Received During Second 45-day Public Comment Period from March 15, 2019, through April 29, 2019 (18 pages)

Attachment 4: Economic and Fiscal Impact Statement (STD 399) (5 pages)