# FINAL STATEMENT OF REASONS

Nutrition Guidelines for School Breakfast and Lunch

## NEW STATE LEGISLATION

On September 20, 2018, Governor Brown signed Assembly Bill 3043, which amended California *Education Code* (*EC*) sections 49531 and 49531.1.

The amended *EC* Section 49531 now specifies that a breakfast must meet the most current meal pattern for the federal School Breakfast Program (SBP) as defined in Title 7, *Code of Federal Regulations* (7 *CFR*), Section 220.8, and a lunch must meet the most current meal pattern for the federal National School Lunch Program (NSLP) as defined in 7 *CFR*, Section 210.10. *EC* Section 49531 no longer specifies that breakfast meet one fourth or lunch meet one third of the current Recommended Dietary Allowance. The amended *EC* Section 49531.1 no longer requires the nutrition guidelines developed and maintained by the California Department of Education (CDE) to:

* Consider recommendations from the *California Food Guide*
* Include guidelines for fat, saturated fat, and cholesterol
* 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

*EC* 49531.1 now states that the nutrition guidelines developed and maintained by the CDE be consistent with the most current meal pattern requirements for the federal SBP as defined in 7 *CFR*, Section 220.8, and the most current meal pattern requirements for the federal NSLP as defined in 7 *CFR*, Section 210.10. Therefore, Title 5, *California Code of Regulations* (5 *CCR*), sections 15558(b), 15558(c), 15559(b), and 15559(c), which address guidelines for total fat and cholesterol as well as comparable food products, are no longer required per *EC* sections 49531 and 49531.1 and are proposed to be deleted.

**NEW FEDERAL REGULATIONS**

On December 12, 2018 the U.S. Department of Agriculture (USDA) published a Final Rule titled *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium*, which amended 7 *CFR*, sections 210.10 and 220.8.

The amended sections now specify that in the NSLP and SBP only half of the grains offered weekly must be whole grain rich, schools can offer flavored or unflavored nonfat or low-fat milk, and the sodium Target 1 is effective through June 30, 2024, and sodium Target 2 is effective starting July 1, 2024.

Therefore the tables and subsequent footnotes in 5 *CCR*, sections 15558(a) and 15559(a) are amended to reflect the necessary changes due to the USDA Final Rule.

## UPDATE TO INITIAL STATEMENT OF REASONS

The original proposed text was made available for public comment for at least 45 days from September 21, 2018, through November 5, 2018. The CDE received 5,757 written comments. A public hearing was held at 8:30 a.m. on November 5, 2018, at the CDE*.* Six individuals provided oral comments at the public hearing:

* Matthew Ruscigno, Public Health Dietitian
* Nancy Weiss, Director of Food Services, Santa Barbara Unified School District
* Anna Herby, Registered Dietitian, Howard Memorial Hospital, Willits, CA
* Tracy Childs, Nutrition Educator, San Diego, CA
* Linda Middlesworth
* Kip Baumann, Parent, Folsom, CA

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF SEPTEMBER 21, 2018, THROUGH NOVEMBER 5, 2018:

Of the total written comments sent to the CDE during the 45-day public comment period, 487 comments were received as Form Letter #1, 5,214 comments were received as Form Letter #2, and 56 comments were received as nonform letters. There were also multiple comments received after the comment period ended.

Summaries of the public comments received by the CDE and its responses are presented in the attached chart. Please note that some of the commenters did not provide their names so they are identified by their email addresses.

## CHANGES TO ORIGINAL PROPOSED TEXT

The specific purpose of each amendment since these regulations were noticed on September 21, 2018, and the rationale for the determination that each 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 15558

Proposed Section 15558(a) is amended. This is necessary because on December 12, 2018, the U.S. Department of Agriculture (USDA) published their 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, as noted in proposed footnote “i.” Target 1 is amended to clarify that the sodium intake can be less than or equal to the grade level specifications. Target 2 is added to the grade level specifications for sodium intake, effective July 1, 2024.

**Formerly Proposed Section 15558(b)** is deleted. This is necessary because *EC* Section 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 for fat, saturated fat, and cholesterol.

**Formerly Proposed Section 15558(c)** is deleted. This is necessary because *EC* Section 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.

### SECTION 15559

**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.

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” to address cultural diversity and 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. Target 1 is amended to clarify that the sodium intake can be less than or equal to the grade level specifications. Target 2 is added to the grade level specifications for sodium intake, effective July 1, 2024.

**Formerly Proposed Section 15559(b)** is deleted. This is necessary because *EC* Section 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.

**Formerly Proposed Section 15559(c)** is deleted. This is necessary because *EC* Section 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 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.

## INCORPORATED BY REFERENCE

The following documents are incorporated by reference:

* The USDA NSLP requirements (revised November 2017) which 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 (revised November 2017) which 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 *USDA Food Buying Guide* (revised May 2017) which can be found on the USDA Food Buying Guide web page at [https://foodbuyingguide.fns.usda.gov](https://foodbuyingguide.fns.usda.gov/).

### *UPDATE TO INCORPORATED BY REFERENCE*

Two documents, 2015–20 Dietary Guidelines for Americans (DGA) (revised 2015) and *California Food Guide* (revised 2008), were listed in the Initial Statement of Reasons as incorporated by reference; however due to legislative changes, these documents are no longer referenced for these proposed amended regulations.

The 2015–20 DGAis no longer incorporated by reference in the proposed California regulations because *EC* Section 49531 no longer requires a breakfast or lunch to incorporate the DGA. However, it is important to note that per the federal Healthy, Hunger-Free Kids Act of 2010 (P.L. 111-296), the DGAis incorporated into the current USDA NSLP and SBP requirements.

The *California Food Guide* is no longer incorporated by reference because the recently amended *EC* Section 49531.1 does not require the nutrition guidelines for school lunches and breakfasts to consider recommendations from the *California Food Guide*.

## ALTERNATIVES DETERMINATION

The State Board of Education has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed; or would be as effective and less burdensome to affected private persons than the proposed regulation; or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

## LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

02-21-19 [California Department of Education]