# **ADDENDUM TO FINAL STATEMENT OF REASONS**

NUTRITION GUIDELINES FOR SCHOOL BREAKFAST AND LUNCH

## NONDUPLICATION STATEMENT

The proposed regulations duplicate federal regulations, which are cited “as authority” and “reference” for the proposed regulations. The duplication is necessary to satisfy the “clarity” standard of Government Code section 11349.1(a)(3). The duplication is mandated by Education Code (EC) sections 49531 and 49531.1. EC Section 49531 defines a nutritionally adequate breakfast as one that qualifies for reimbursement as defined under 7 Code of Federal Regulations (7 CFR) section 220.8. *EC* section 49531 additionally defines a nutritionally adequate lunch as one that qualifies for reimbursement under 7 CFR section 210.10. Moreover, *EC* section 49531.1 states that the California Department of Education (CDE) shall develop nutrition guidelines for breakfasts and lunches consistent with the requirements as defined in *EC* Section 49531. These regulations clearly identify to school food authorities that federal breakfast and lunch requirements are to be followed in California.

## UPDATE TO FINAL STATEMENT OF REASONS

### *SECOND 45-DAY PUBLIC COMMENT PERIOD OF MARCH 15, 2019, THROUGH APRIL 29, 2019*

As a result of the amendments to EC sections 49531 and 49531.1 in September 2018, and the Final Rule titled, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium,* published by the U.S. Department of Agriculture (USDA) in December 2018, which amended 7 CFR sections 210.10 and 220.8, the CDE amended the proposed regulations to align with these new requirements for the federal National School Lunch Program (NSLP) and School Breakfast Program (SBP). Consequently, at its March 2019 meeting, the State Board of Education adopted these proposed regulations and approved a 45-day public comment period to circulate these changes. The CDE conducted the comment period starting on March 15, 2019, through April 29, 2019. The CDE also held a public hearing on April 29, 2019.

### *SUMMARY OF COMMENTS RECEIVED DURING THE SECOND 45-DAY PUBLIC COMMENT PERIOD OF MARCH 15, 2019, THROUGH APRIL 29, 2019*

During the second 45-day public comment period (March 15, 2019, through April 29, 2019), the CDE received six written comments. One of these comments, Comment #5, included relevant portions, as well as some nonrelevant points, which were already addressed in the first 45-day comment period. The relevant portion of this comment did not result in any change to the proposed regulations. A public hearing was held at 8:30 a.m. on April 29, 2019, at the CDE*.* No oral comments were presented at the public hearing.

### *SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SECOND 45-DAY COMMENT PERIOD OF MARCH 15, 2019, THROUGH APRIL 29, 2019*

#### Joy Pratt, Private Citizen

**Comment #1:** Make meals healthy and nutritious and to serve fresh, minimally processed, low sugar foods.

**Reject:** Ms. Pratt’s comment does not address regulatory changes that were noticed for the second 45-day public comment period. Based on the current USDA meal pattern requirements, school districts can and do create meals that are healthy, nutritious, fresh, minimally processed, and low in sugar.

#### Anna Herby, Dietitian, Frank R. Howard Memorial Hospital, Willits, CA

**Comment #2:** Offer a plant-based entrée at each meal, remove processed meat, and offer dairy alternatives as an option for students.

**Reject:** These comments were addressed in the first 45-day comment period. These comments are not relevant to the changes made to the regulations for the second
45-day public comment.

However, in response to this comment, the CDE notes that it provides resources to school districts so they can serve a variety of foods, which can include plant-based options. The nutrition requirements set forth by USDA for NSLP and SBP offer the flexibility necessary for school districts to implement a plant-based entrée at each meal. Many school districts implement plant-based options on their own or through campaigns such as Meatless Mondays. The CDE’s Nutrition Services Division provides plant-based options through resources, training, and technical assistance to schools. Due to the unique facilities, staffing, food procurement, and other fiscal requirements of the over 1,300 school districts in California, local-level discretion is necessary. The CDE will continue to provide resources to support schools that want to implement plant-based options but has no legal authority to mandate them to serve plant-based options at each meal.

The nutrition requirements set forth by the USDA for the NSLP and SBP offer the flexibility necessary for school districts to limit processed meat from its menus. Due to the unique facilities, staffing, food procurement, and other fiscal requirements of the over 1,300 school districts in California, local-level discretion is necessary. The CDE will support schools that want to limit processed meat, but has no legal authority to mandate them to do so.

With regard to the comment related to dairy alternatives, it is important to note that the USDA’s NSLP and SBP, 7 CFR section 210.10(d)(1)(i), must ensure schools offer at least two types of dairy milk at each meal. For a nondisability preference, the USDA regulations provides the ability to allow a parent or guardian to submit a written request to their school district requesting their child receive an alternative to dairy milk as part of the school meal. Each district has the discretion to provide alternative milk when receiving a nondisability preference. If the district provides the parent’s or guardian’s request for alternative milk, it must meet specific nutrient standards set forth in 7 CFR section 210.10(d)(3). Milk alternatives can also be sold as an individual item, outside of the school meal, provided it meets the required state and federal competitive beverage standards. A Medical Statement To Request Special Meals or Accommodations for a disability, signed by a state licensed healthcare professional, can allow a student to receive a plant-based milk in lieu of a dairy milk as part of the school meal and the district must comply. Except for the two noted exceptions stated above, schools are required to offer at least two types of dairy milk at each meal. The CDE has no legal authority to mandate all schools to: (1) offer plant-based milks at each meal, (2) offer plant-based milks as a competitive beverage without a written consent, (3) disallow chocolate milk, or (4) to allow sugar-free alternatives.

#### Nancy Weiss, Director of Food Service, Santa Barbara Unified School District

**Comment #3:** Add more plant-based options; remove processed meat; and make
plant-based, nondairy milks more easily accessible and recommended as part of the reimbursable meal.

**Reject:** These comments were addressed in the first 45-day comment period. These comments are not relevant to the changes made to the regulations for the second
45-day public comment and are similar to Comment #2; please see the CDE’s response to Comment #2.

#### Tracy Childs, parent from San Diego

**Comment #4:** Offer a plant-based entrée at each meal, remove processed meat, and offer dairy alternatives as an option for students.

**Reject:** These comments were addressed in the first 45-day comment period. These comments are not relevant to the changes made to the regulations for the second
45-day public comment and are similar to Comment #2; please see the CDE’s response to Comment #2.

#### Mark Kennedy, Vice President of Legal Affairs, Physicians Committee for Responsible Medicine

**Comment #5:** Exclude processed meat; offer a plant-based entrée at each meal, require fluid milk substitutes; and to not delete the formerly proposed sections of the
5 *CCR*, sections 15558(b), 15558(c), 15559(b), and 15559(c).

**Reject:** The comment regarding the deletion of the formerly proposed sections of 5 CCR, namely sections 15558(b), 15558(c), 15559(b), and 15559(c), is deemed relevant but is rejected. The formerly proposed sections are no longer necessary because Assembly Bill 3043, signed by Governor Brown on September 20, 2018, amended Education Code section 49531.1, which no longer requires the state nutrition guidelines for school lunches and breakfasts to include guidelines for fat, saturated fat, and cholesterol and to 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. These requirements were included in the formerly proposed sections 15558(b), 15558(c), 15559(b), and 15559(c) and since the requirements are no longer required, these sections are deleted. While these specific requirements are no longer required, the current USDA meal pattern does limit the use of saturated fats and trans fats, limits milk options to low-fat and fat-free, and specifies a calorie range that must be met. These meal pattern standards will indirectly limit total fat and cholesterol.

The comments regarding the exclusion of processed meat, offering a plant-based entrée at each meal and requiring fluid milk substitutes were addressed in the first 45-day comment period. These comments are not relevant to the changes made to the regulations for the second 45-day public comment and are similar to Comment #2; please see the CDE’s response to Comment #2.

#### Matt Ruscigno, Public Health Dietitian, Los Angeles

**Comment #6:** Support the passage of Assembly Bill 479, as introduced on February 12, 2019, which would establish the California School Plant-based Food and Beverage Program allowing school districts to apply for additional meal reimbursement, upon State appropriation, for serving plant-based food options.

**Reject:** This bill does not affect these regulations nor vice versa.

### NONSUBSTANTIVE AMENDMENTS MADE TO REGULATIONS AFTER THE SECOND 45-DAY PUBLIC COMMENT PERIOD

#### SECTION 15558

**Section 15558(a) and Footnotes (d) and (i)** are amended to clarify that 7 CFR section 210.10(c) is incorporated by reference in the table titled **Amount of Food per Week (Minimum per Day)**. **Footnote (f)** is amended to clarify that while at least half the grains offered weekly must be whole grain, the remaining grain items must be enriched to be consistent with 7 CFR section 210.10(c). **Footnote (g)** is amended to define low-fat milk as containing one percent fat or less and to clarify that fat-free milk is also referred to as “skim.” This revised footnote is consistent with 7 CFR section 210.10(c). **Footnote (h)** is amended to clarify that food products and ingredients must contain zero grams of trans fat, which is less than 0.5 grams, per serving. Section 15558 is further amended to delete unnecessary language in **Footnote (h)** as the fluid milk fat content is already addressed Footnote (g). Section 15558 is amended to delete unnecessary language in **Footnote (i)**, as well as clarifying that 7 CFR section 210.10(f)(3) is incorporated by reference. This revised footnote is consistent with 7 CFR section 210.10(f)(3) that Target 1 for sodium is effective through June 30, 2024 with Target 2 then effective starting July 1, 2024.

#### SECTION 15559

**Section 15559(a)** is amended to clarify that 7 CFR section 220.8 is incorporated by reference in the table titled **Amount of Food per Week (Minimum per Day)**. **Footnote (c)** is amended to clarify that 7 CFR section 210.10(c)(2)(iii) is incorporated by reference in the table titled **Amount of Food per Week (Minimum per Day)**. **Footnote (d)** is amended to clarify while at least half the grains offered weekly must be whole grain, the remaining grain items must be enriched to be consistent with 7 CFR section 220.8(c). **Footnote (f)** is amended to define low-fat milk as containing one percent fat or less and to clarify that fat-free milk is also referred to as “skim.” This revised footnote is consistent with 7 CFR section 210.10(c). **Footnote (h)** is amended to clarify that food products and ingredients must contain zero grams of trans fat, which is less than 0.5 grams, per serving. Section 15559 is further amended to delete unnecessary language in **Footnote (h)** as the fluid milk fat content is already addressed Footnote (f). Section 15559 is amended to delete unnecessary language in **Footnote (i)**, as well as clarifying that 7 CFR section 220.8(f)(3) is incorporated by reference. This revised footnote language is consistent with 7 CFR section 220.8(f)(3) that Target 1 for sodium is effective through June 30, 2024, with Target 2 then effective starting July 1, 2024. Section 15559 is further amended by deleting superscript (i) referencing trans fat in the chart. This superscript is deleted because Footnote (i) refers to sodium and not to trans fat.

### UPDATE TO DOCUMENTS INCORPORATED BY REFERENCE

The following document is added as incorporated by reference:

* Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium (revised December 2018) 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>

Two documents incorporated by reference listed in the Final Statement Reasons were incorrectly cited. The correct citations and web pages are:

* The USDA NSLP requirements (revised December 2018) can be found on the Electronic *Code of Federal Regulations* web page at
<https://www.ecfr.gov/cgi-bin/text-idx?SID=ba887ab4ed930c6b6265930a87d7cd6a&mc=true&node=se7.4.210_110&rgn=div8>
* The USDA SBP requirements (revised December 2018) 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, which was listed in the Final Statement of Reason, is no longer incorporated by reference in these proposed regulations because it is not a regulatory requirement. This guide is a tool used to help school food authorities determine the quantities for the food found in the different food groups. It is not a required resource to fulfill the SBP or NSLP requirements.