

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1545 (Delegates Waldstreicher and A. Washington)
Ways and Means

State Board of Education - Nutrition Standards for Public School Food

This bill requires the State Board of Education to establish minimum nutrition standards for foods provided or sold in public schools, including specified standards related to flavored milk, grains, and salt. The nutrition standards established for meals offered by schools that participate in the federal school lunch or breakfast program must meet or be more stringent than the applicable nutrition standards and guidelines established by the U.S. Department of Agriculture (USDA). **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: The State Board of Education can establish minimum nutrition standards using existing resources.

Local Effect: Local school system expenditures may increase, and revenues may decrease for food service, as explained below. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The standards for foods provided or sold in public schools must include requirements that:

- any flavored fluid milk must be fat free;
- all grains must contain 100% whole wheat or be whole grain-rich products that contain a blend of whole grain and enriched meal or flour of which at least 50% is whole grain;

- from July 1, 2018, to June 30, 2022, both inclusive, the sodium content of school meals offered to each grade group, on average over the school week, must be no greater than the Target 2 amounts specified in 7 CFR 210.10 (shown in Exhibit 1) for school lunches and in 7 CFR Part 220.8 for school breakfasts (moderate in salt and sodium); and
- beginning July 1, 2022, the sodium content of school meals offered to each grade group must be no greater than the Final Target amounts (shown in Exhibit 1) for school lunches and in 7 CFR Part 220.8 for school breakfasts (moderate in salt and sodium).

Current Law:

Federal Food and Nutrition Programs

Local school systems are subject to federal law and regulations through participation in federal food and nutrition programs administered by USDA, including (among others) the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and other programs for students who are eligible for free and reduced-price meals and free milk in schools. The Maryland State Department of Education (MSDE) monitors local school compliance with federal law regarding school food and nutrition programs. The Code of Maryland Regulations indicates that local school systems are subject to administrative review by MSDE and/or USDA for the purpose of evaluating the administration of a food and nutrition program.

NSLP requires schools to provide nutritious and well-balanced meals to all the children they serve. The federal Healthy, Hunger-Free Kids Act of 2010 requires schools to offer nutritious, well-balanced, and age-appropriate meals to all the children they serve to improve their diets and safeguard their health. Children age five and older must be offered lunches that meet the following nutrition standards for their age/grade group: specified food components and food quantities; zero grams of trans fat per serving or a minimal amount of naturally occurring trans fat; less than 10% of total calories from saturated fat; reduced amount of sodium; and follow the applicable recommendations from the *2010 Dietary Guidelines for Americans*.

Federal Sodium Guidelines

Federal sodium guidelines for NSLP are shown in **Exhibit 1**. School lunches offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the table. USDA published a final interim rule granting flexibility for meeting Target 2 in November 2017, which will become effective July 1, 2018, for the 2018-2019 school year.

**Exhibit 1
Sodium Targets
School Lunch
(in milligrams)**

| <u>Age/Grade Group</u> | <u>2014-2015 Target 1</u> | <u>2017-2018 Target 2</u> | <u>2020-2023 Final Target</u> |
|------------------------|-------------------------------|-------------------------------|-----------------------------------|
| K-5 | ≤ 1,230 | ≤ 935 | ≤ 640 |
| 6-8 | ≤ 1,360 | ≤ 1,035 | ≤ 710 |
| 9-12 | ≤ 1,420 | ≤ 1,080 | ≤ 740 |

Note: School lunches offered to each age/grade group must meet, on average over the school week, the levels of sodium specified in the table above. Federal flexibility has been granted in meeting Target 2 by 2017-2018.

Source: U.S. Department of Agriculture

Nutrition Standards for Food Served or Sold in Schools

School food authorities have several ways to plan menus. The minimum levels of nutrients and calories that lunches must offer depend on the menu planning approach used and the ages/grades served.

Schools must keep production and menu records for the meals they produce. These records must show how the meals contribute to the required food components, food items, or menu items every day. In addition, for lunches, these records must show how the lunches contribute to the nutrition standards and the appropriate calorie and nutrient levels for the ages or grades of the children in the school over the school week. If applicable, schools or school food authorities must maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week, (1) nutrition standards and (2) the nutrient and calorie levels for children for each age or grade group served. Local schools are encouraged but not required to inform students, parents, and the public about efforts they are making to meet the nutrition standards for school lunches.

Background: The federal Consolidated Appropriations Act of 2017 provides flexibilities related to flavored milk, whole grains, and sodium. USDA published an [interim final rule](#) on November 30, 2017, which extends through the 2018-2019 school year three menu-planning flexibilities currently available to many Child Nutrition Program (CNP) operators. These flexibilities include providing operators the option to offer flavored, low-fat (1% fat) milk in CNP; extending the state agencies' option to allow

individual school food authorities to include grains that are not whole grain-rich in the weekly menu offered under NSLP and SBP; and retaining sodium Target 1 in NSLP and SBP. The comments from the public on the long-term availability of these three flexibilities will help inform the development of a final rule, which is expected to be published in fall 2018 and implemented in school year 2019-2020.

These regulatory requirements, which began in 2012, arose from the *2010 Dietary Guidelines for Americans*. In part, the 2012 regulatory requirements (1) allowed flavoring only in fat-free milk, effective 2012-2013 school year; (2) established a requirement that, effective 2014-2015 school year, all grains served in NSLP and SBP must comply with the whole grain-rich requirement (meaning the grain product contains at least 50% whole grains and the remaining grain content of the product must be enriched); and (3) required schools to gradually reduce the sodium content of the average weekly school meals offered to each grade group in NSLP and SBP by meeting progressively lower sodium targets over a period of 10 years. However, since that time, USDA reports that some program operators have experienced challenges with the whole grain-rich requirement and the sodium limits. USDA also reports that program operators and industry partners reported a significant decrease in daily milk consumption since the flavored milk was required to be fat free.

Local Fiscal Effect: Local school systems lose the flexibility granted due to federal rulemaking regarding the operation of NSLP and SBP; thus, local school system expenditures for food service may increase, and revenues for food service may decrease. One of the issues regarding the rules related to whole grains and sodium is the availability of foods that meet the requirements and the related costs; therefore, local school system expenditures may increase to purchase foods that meet the requirement of the bill. However, local school systems will need to control costs because they only receive a limited amount of funds to operate the program. Thus, prices may need to be raised for students who pay full price. Alternatively, local school systems will need to cut food service expenditures, such as salaries or other foods.

Local school system revenues may decrease due to requiring that any flavored fluid milk be fat free. USDA reports that the requirement that any flavored fluid milk be fat free correlated with a decrease in daily milk consumption in schools and likely a decrease in milk sales. Thus, prohibiting the sale of flavored milk with fat may reduce future revenues.

Since it is unknown how many school systems have requested or would request USDA flexibility, the fiscal impact on any particular local school system is unknown.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education; United States Department of Agriculture; Department of Legislative Services

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