

To What Extent Do State Laws Align with the Federal School Meal Standards?

JAMIE F. CHRIQUI, PHD, MHS AND ELIZABETH PIEKARZ-PORTER, JD

Background

The Healthy, Hunger-Free Kids Act of 2010 required that federal school meal standards be consistent with the current Dietary Guidelines for Americans.^{1,2} In 2012, the U.S. Department of Agriculture (USDA) issued updated nutrition standards governing the federal school meal programs including the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) to align with the Dietary Guidelines for Americans.³

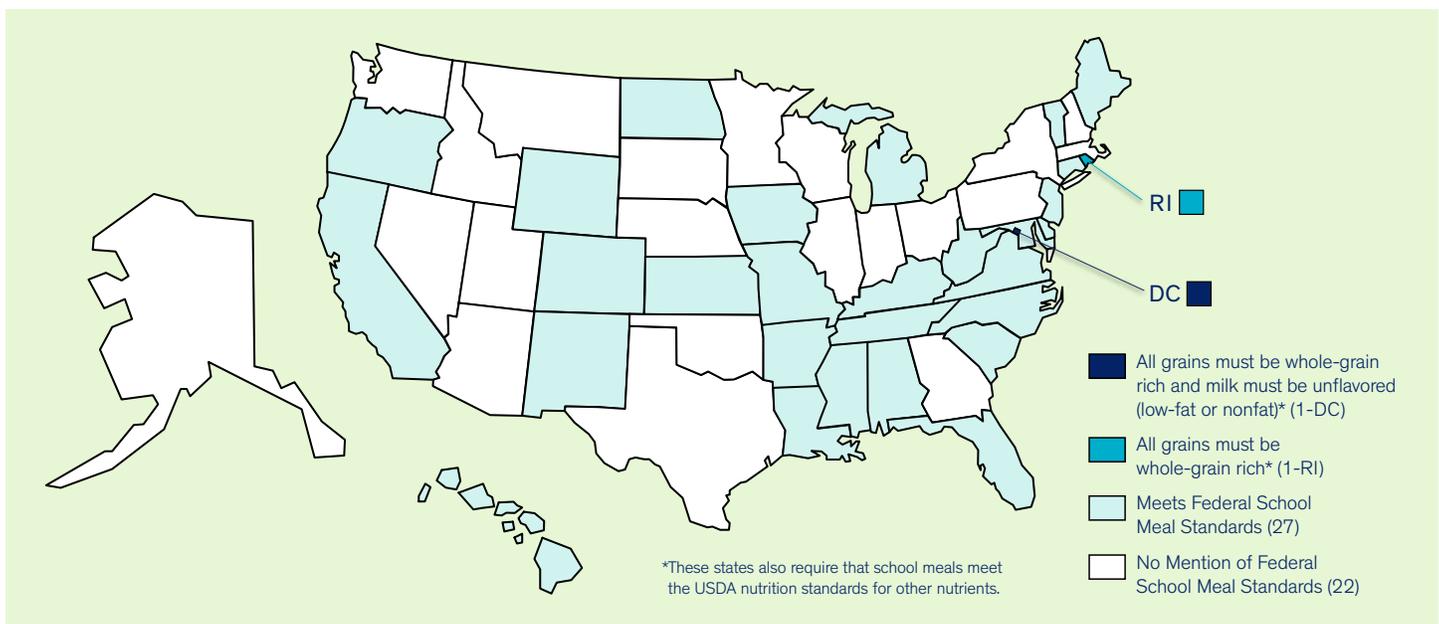
The updated nutrition standards increased the availability of fruits, vegetables, and whole grains, and restricted saturated fat, trans fat, sodium, calories, and milk to only fat-free (flavored or unflavored) and unflavored low-fat milk.³ The updated standards were to be phased-in between school years 2012-13 and 2022-23, including a phase-in of the whole-grain and sodium standards: whole grains were required to be whole-grain rich by school year 2014-15 and the sodium standards were to meet the Target 2 level (≤ 935 mg for K-5 grade levels, $\leq 1,035$ mg for 6-8 grade levels, and $\leq 1,080$ mg for 9-12 grade levels) by school year 2017-18.⁴

In 2017, the USDA issued an interim final rule that included, among other things, flexibilities for implementation of the whole grain, sodium, and milk fat standards for school meals. These interim flexibilities were codified in a final rule issued

in December 2018.⁵ This rule allowed schools participating in the federal Child Nutrition Programs to: offer flavored, low-fat milk (which was not allowed in the 2012 rule); only require that half (not all) whole grains be whole-grain rich; and extending the sodium Target 1 levels through school year 2023-24 and moving to Target 2 levels in school year 2024-25 (originally scheduled for phase-in in school year 2017-18) and eliminating Target 3 levels (originally scheduled for phase-in in school year 2022-23).⁵ In April 2020, the meal pattern flexibilities were vacated and remanded by the U.S. District Court for the District of Maryland which invalidated the flexibilities and required that school meals meet the implementation timeline in the original (2012) final rule.⁶ On November 25, 2020, the USDA published a proposed rule to restore the milk, whole grain, and sodium flexibilities.⁷

While the USDA has the ultimate authority for establishing the nutrition standards for the federal Child Nutrition Programs, some states have also addressed school meal nutrition standards in their state laws. **The purpose of this fact sheet is to summarize the extent to which state laws meet the federal school meal standards and/or the whole-grain, sodium, and/or milkfat provisions that are subject to the proposed flexibilities.**

FIGURE 1 States with Laws Governing School Meals, SY 19-20



Results

As of school year 2019-20, 28 states and the District of Columbia had codified laws that required that school meals at least meet the federal school meal standards (see Figure). In addition, and consistent with the 2012 school meal standards update, Rhode Island and the District of Columbia's law required that all whole grains served be whole-grain rich. The District of Columbia only allows the sale of unflavored low-fat or nonfat milk as part of a school meal. No state law met the Target 2 sodium levels as of school year 2019-20. In states with no law addressing school meals, local education agencies (typically districts and charters) that participate in the federal school meal programs must comply with the federal standards, regardless of having a state law or not.

Conclusion

State laws are heavily aligned with the federal school meal standards. Thus, if the proposed flexibilities for whole grains, milk fat, and sodium were to be codified by the USDA, with very few exceptions, states would also institute these flexibilities. As a result, over 29.6 million students nationwide⁸ would be subject to school meal standards that do not meet the latest scientific guidance included in the Dietary Guidelines for Americans.

Methods

The state law data were compiled through primary legal research compiled by the National Wellness Policy Study at the University of Illinois Chicago. State laws were compiled using Lexis-Nexis⁹ and Westlaw¹⁰ by trained legal researchers and analyzed by an attorney and trained analysts.

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References

1. Healthy, Hunger-Free Kids Act of 2010, 124 Stat. 3183 U.S.C. 1779 (2010).
2. U.S. Department of Health and Human Services and U.S. Department of Agriculture. 2015-2020 Dietary Guidelines for Americans. 8th Edition ed. Washington, D.C.: Government Printing Office; 2015.
3. U.S. Department of Agriculture. Nutrition Standards in the National School Lunch and School Breakfast Programs: Final Rule. *Fed. Reg.* 2012;77(17):4088-4167. <https://www.govinfo.gov/content/pkg/FR-2012-01-26/pdf/2012-1010.pdf>. Accessed December 11, 2020.
4. U.S. Department of Agriculture. Implementation Timeline for Final Rule: Nutrition Standards in the National School Lunch and School Breakfast Programs. 2012; https://fns-prod.azureedge.net/sites/default/files/implementation_timeline.pdf. Accessed December 11, 2020.
5. U.S. Department of Agriculture. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements; Final Rule. *Fed. Reg.* 2018;83(238):63775-63794. <https://www.govinfo.gov/content/pkg/FR-2018-12-12/pdf/2018-26762.pdf>.
6. *Center for Science in the Public Interest et al., v. Sonny Perdue, Secretary, et al.*, No. 8:19-cv-01004-GJH (D. Md. 2020).
7. U.S. Department of Agriculture. Restoration of Milk, Whole Grains, and Sodium Flexibilities. *Fed. Reg.* 2020;85(228):75241-75261. <https://www.govinfo.gov/content/pkg/FR-2020-11-25/pdf/2020-25761.pdf>. Accessed December 11, 2020.
8. School Nutrition Association. School Meal Trends & Stats. 2020; <https://schoolnutrition.org/aboutschoolmeals/schoolmealtrendsstats/>. Accessed December 11, 2020.
9. LexisNexis. Lexis Advance. <https://www.lexisnexis.com/en-us/home.page>. Accessed August 1, 2020.
10. Thomson Reuters. Westlaw Edge. <https://legal.thomsonreuters.com/westlaw>. Accessed August 1, 2020.