



School Meal Flexibilities Maryland Court Decision

On May 1st, 2017, in his first official action as USDA Secretary, Sonny Perdue issued a proclamation announcing rulemaking of *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements*. Prior to this action, Congress included legislative action in several appropriations acts beginning in 2012 (P.L. 112-55) that addressed the whole grain requirements and Sodium Target levels.

Q: When did the final rule providing flexibilities occur?

A: In 2018, USDA published the final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* allowing for more flexibilities in the food served through the NSLP and the SBP.

Q: What flexibilities did the 2018 final rule allow?

A: The *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* final rule offered schools new options as they serve meals under the National School Lunch Program (NSLP), School Breakfast Program (SBP) and other federal child nutrition programs. The rule:

- Provides the option to offer flavored, low-fat milk to children participating in school meal programs, and to participants ages six and older in the Special Milk Program for Children (SMP) and the Child and Adult Care Food Program (CACFP)
- Requires half of the weekly grains in the school lunch and breakfast menu be whole grain-rich; and
- Provides more time to reduce sodium levels in school meals.

Q: Can you expand on the sodium flexibility?

A: The final rule provided more time to reduce sodium levels in School Nutrition Program (SNP) meals. Specifically, the final rule maintains Target 1 sodium limits for school meals through SY 2023–24, with Target 2 sodium limits taking effect in SY 2024–25. The final sodium Target 3 was eliminated. Schools already meeting Target 2 do not have to change their menus as a result of the final rule.

Q: Did this ruling eliminate all nutrition standards?

A: No, SNA supports maintaining robust federal nutrition standards to ensure all students receive healthy, well-balanced meals at school, and the flexibility provided under the Final Rule did not compromise ongoing efforts to improve school meals. The Final Rule preserved strong standards, including Target 1 sodium reductions and limits on calories and fat, which ensure school meals do not contribute to obesity.

Q: What does the Maryland Court decision vacating the school meal flexibilities final rule mean?

A: On April 13, 2020, the U.S. District Court of Maryland sent back to USDA for “further proceedings” the 2018 Final Rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements*.

Q: Did USDA do something wrong?

A: No, the ruling found that the final rule was “not inconsistent” with federal statutes; the only fault was in the rulemaking process. In fact, the decision states “that the Final Rule shows that USDA used its expertise to balance the nutrition science in the Dietary Guidelines with the practical considerations of implementation.” Furthermore, the ruling found “USDA did not improperly consider student taste preferences, operational flexibilities, and the role of product innovation at the expense of student health and nutritional science, but instead balanced these considerations against each other.”

Q: Does this court ruling mean schools no longer have these flexibilities?

A: While this is not in effect during the COVID-19 emergency for schools that are closed and continue to serve meals, it would mean that the programs would revert to the Healthy, Hunger-Free Kids Act standards from 2012.

Q: So, if nothing is done, we will lose all the milk, whole grains and sodium flexibilities that have been working so well for our programs?

A: That is correct.

Q: What is SNA doing to make sure we can keep the flexibilities we need to keep our programs successful?

A: SNA immediately sent a letter to Secretary Perdue requesting swift action to restore school meal flexibilities and is in frequent communications with USDA to offer our assistance in any way needed.