

# STATE OF NEW YORK

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4644

2021-2022 Regular Sessions

## IN SENATE

February 8, 2021

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Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

AN ACT to amend the public health law, in relation to enacting the healthy food service guidelines for New York act of 2021

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "healthy  
2 food service guidelines for New York act of 2021".

3 § 2. Legislative findings and intent. The Senate and Assembly of the  
4 State of New York finds as follows:

5 1. A healthy diet, consistent with the most recent Dietary Guidelines  
6 for Americans (DGA), can reduce the risk of many chronic diseases, such  
7 as obesity, cardiovascular disease, diabetes, osteoporosis, and some  
8 cancers. Poor nutrition, on the other hand, can negatively affect  
9 growth, development, and health status. The New York State Prevention  
10 Agenda 2019-2024 established a goal of increasing access to healthy and  
11 affordable foods and beverages to support the overarching goal of reduc-  
12 ing obesity and the risk of chronic disease.

13 2. The typical diet of Americans is not consistent with the DGA, and  
14 unhealthy eating behaviors are too common among New Yorkers. It is espe-  
15 cially challenging for people of low socioeconomic status, people of  
16 color, and people with disabilities to access healthy food. According  
17 to the Prevention Agenda Toward the Healthiest State Progress Report  
18 2018:

19 (a) 37.4% of adults in NYS consume fruit less than once per day. The  
20 prevalence is highest for adults who are Black or Hispanic (39.8% and  
21 39.3%, respectively), live in households that earn less than \$25,000 a  
22 year (40.4% and 43.7%), have less than a high school education (42.1%),  
23 or are living with disability (41.7%).

24 (b) 22.4% of adults in NYS consume vegetables less than once per day.  
25 The prevalence is highest for adults who are non-Hispanic Black (29.3%),

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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live in households that earn less than \$15,000 a year (32.8%), have less than a high school education (30.5%), or are living with disability (29.8%).

(c) 23.2% of adults in NYS consume a sugary drink at least once a day. The prevalence is highest for adults who are non-Hispanic Black (31.3%), live in households that earn less than \$15,000 a year (35.4%), have less than a high school education (33.3%), or are living with disability (28.2%).

(d) 43.8% of NYS high school students consume fruit less than once per day. The prevalence is highest for students who are male (45.8%), in 10th grade (46.1%), or Black (47.5%).

(e) 22.3% of NYS middle and high school students consume a sugary drink at least once a day. The prevalence is highest for students who are male (23.6%), in high school (23.8%), or Black (29%).

3. The state has a responsibility to ensure the healthfulness of the food it serves and sells, because:

(a) Achieving a healthy diet requires a supportive environment. All people need ready access to affordable healthy foods and beverages to support nutritious diets;

(b) The state purchases, sells, and serves foods and beverages through multiple agencies, facilities, institutions, and programs to employees, visitors, recipients of public services, and people in state custody;

(c) Many people who depend on state-sponsored institutions and programs for daily nutrition are members of disadvantaged communities that experience disparities in access to healthy food and prevalence of diet-related illness;

(d) Much of the cost of the state's burden of diet-related illness is absorbed by the state's Medicare and Medicaid programs;

(e) Approximately 290,000 people are employed by the state. Reducing the impact of diet-related diseases will support a healthier and more productive workforce; and

(f) Public demand for healthier food is high, with six in ten people reporting that healthfulness is a leading driver of their food purchases.

4. The Centers for Disease Control and Prevention and other authoritative public health organizations recommend that governments, businesses, and large institutions adopt healthy food service guidelines to support individuals' adherence to the DGA. In 2012, the New York Academy of Medicine proposed several strategies to improve population health in New York State through food procurement policies, including comprehensive nutrition standards. Also in 2012, the New York State Council on Food Policy appointed a Workgroup that developed recommended nutrition standards for food procurement based on the DGA. In 2019, the National Association for the Advancement of Colored People recognized the impact of food choices on people and communities of color, and resolved that the availability of tasteful and culturally relevant plant-based meals be a 2020 legislative priority.

§ 3. Article 2 of the public health law is amended by adding a new title 8 to read as follows:

## TITLE 8

### STATE FOOD STANDARDS

#### Section 269. Development of state food standards.

##### 269-a. Applicability of state food standards.

##### 269-b. Implementation of state food standards.

§ 269. Development of state food standards. 1. Within three months following the effective date of this section, the department, in consul-

1 tation with the office of general services, shall begin an assessment of  
2 the food and beverage purchasing, service, sales, and marketing policies  
3 and activities of each state agency. The department shall develop and  
4 finalize state food standards considering the findings of such assess-  
5 ment no later than twelve months following the effective date of this  
6 section, for foods purchased, served, sold, and promoted by state agen-  
7 cies, programs, and institutions and on state property. The department  
8 shall report such standards to the state legislature, and disseminate  
9 them to the heads of all state agencies that purchase, prepare, serve,  
10 or promote food and beverages.

11 2. The state food standards developed pursuant to this section shall:

12 (a) be consistent with or exceed the recommendations in the most  
13 recent edition of the federal Dietary Guidelines for Americans, includ-  
14 ing as to sodium, whole grains, added sugars, saturated fat, cholester-  
15 ol, and fiber;

16 (b) prohibit state agencies from offering or promoting sugar-sweetened  
17 beverages;

18 (c) support and encourage breastfeeding, ensuring that employees are  
19 provided with appropriate space and adequate time for breastfeeding or  
20 expressing milk for their infants;

21 (d) include recommendations for the use of sustainably and locally  
22 grown New York state food products to the greatest extent possible;

23 (e) ensure the availability of safe, clean tap water whenever foods  
24 and beverages are sold or served;

25 (f) encourage state agencies to offer foods and beverages that reflect  
26 the health risks, allergens, traditions, and preferences of the demo-  
27 graphics served; and

28 (g) encourage the consumption of plant-based whole foods, including  
29 fruits, vegetables, legumes, nuts, and whole grains.

30 3. The state food standards shall be reviewed and updated by the  
31 department as necessary, but no less often than every five years, to  
32 ensure that the standards remain current and science-based.

33 4. In developing the state food standards, the department shall  
34 consider the following:

35 (a) recommendations for nutrition standards for foods, beverages, or  
36 meals made by authoritative scientific organizations, including the  
37 guidelines for purchased food recommended by the New York State Food  
38 Policy Council, the American Heart Association Workplace Food and Bever-  
39 age Toolkit, the Food Service Guidelines for Federal Facilities, the  
40 USDA National School Lunch Program and School Breakfast Program stand-  
41 ards, the USDA Child and Adult Care Food Program guidelines, the Ameri-  
42 can Cancer Society Guideline for Diet and Physical Activity, and the  
43 American Diabetes Association Diabetes Plate Method;

44 (b) both positive and negative contributions of nutrients, ingredi-  
45 ents, and foods to the diets of adults and children, including calories  
46 or portion size, saturated fat, sodium, added sugars, and the presence  
47 of fruits, vegetables, and whole grains; and

48 (c) adaptations of the standards for different venues, such as child-  
49 care, correctional facilities, government meetings, or other settings  
50 and programs with unique populations or circumstances.

51 § 269-a. Applicability of state food standards. 1. The state food  
52 standards developed pursuant to section two hundred sixty-nine of this  
53 title shall apply to all foods and beverages purchased, prepared,  
54 served, sold, and promoted by all state agencies, programs, and insti-  
55 tutions and sold, served, or promoted on state property, including but  
56 not limited to:

1 (a) All state government office buildings.  
2 (b) Meetings and conferences hosted or funded by state agencies.  
3 (c) Road-side rest areas and welcome centers managed or owned by the  
4 state.  
5 (d) State parks and historic sites.  
6 (e) Emergency food relief organizations receiving hunger prevention  
7 and nutrition assistance program funds.  
8 (f) State child and adult care food programs.  
9 (g) State-supported hospitals.  
10 (h) City University of New York and State University of New York, and  
11 each of the institutions in these university systems.  
12 (i) Office for the aging congregate and home-delivered meal services.  
13 (j) Department of corrections and community supervision facilities.  
14 (k) Office of mental health inpatient and residential services.  
15 (l) Bureau of adult care homes.  
16 (m) Division of juvenile justice and opportunities for youth facili-  
17 ties.  
18 (n) Office for people with developmental disabilities services.  
19 (o) Office of addiction services and supports treatment centers.  
20 (p) Public schools, charter schools, and participating nonpublic  
21 schools.  
22 (q) Education department's summer food service program.  
23 2. All purchases made by any department, division, or agency listed in  
24 subdivision one of this section, or by any officer on behalf of a  
25 department, division, or agency listed in subdivision one of this  
26 section, shall be made in accordance with the state food standards.  
27 3. All contracts made by any department, division, or agency listed in  
28 subdivision one of this section, or by any officer on behalf of a  
29 department, division, or agency listed in subdivision one of this  
30 section, for the purchase, service, catering, vending, or promotion of  
31 food or beverage will ensure the food or beverage supplied, served,  
32 sold, and promoted shall be in accordance with the state food standards.  
33 All existing contracts that do not meet such standards shall be revised  
34 or terminated at the next renewal stage of such contracts. All grantees  
35 of the state shall comply with the state food standards when purchasing  
36 food with grant funds.  
37 (a) No contract shall permit marks or logos associated with a state  
38 department, division, agency, or institution to be used to promote any  
39 sugar-sweetened beverage.  
40 (b) No contract shall permit any company or state department, divi-  
41 sion, agency, or institution to refer to a sugar-sweetened beverage as  
42 an official beverage of a state department, division, agency, or insti-  
43 tution.  
44 (c) No contract shall require or suggest that an employee of any state  
45 department, division, agency, or institution should promote a sugar-  
46 sweetened beverage.  
47 (d) No contract shall include payments to a state department, divi-  
48 sion, agency, or institution that are contingent on a minimum volume of  
49 sales of sugar-sweetened beverages.  
50 § 269-b. Implementation of state food standards. Within twelve months  
51 of the effective date of this section, the department shall adopt a plan  
52 for providing technical and supervisory assistance to state agencies  
53 implementing the state food standards promulgated pursuant to section  
54 two hundred sixty-nine of this title. At minimum, such plan shall estab-  
55 lish:

1     1. A timeline for state agencies to receive initial training and  
2     implement the state food standards.

3     2. A process by which the department shall monitor compliance with the  
4     state food standards on a routine basis and follow-up with additional  
5     technical assistance as needed to improve compliance.

6     § 4. This act shall take effect immediately.