

---

## TESTIMONY

**Testimony To:** Senate Committee on Health and Welfare

**Respectfully Submitted by:** Rosie Krueger, State Director of Child Nutrition Programs

**Subject:** S. 26 - An act relating to prohibiting certain artificial dyes in foods and beverages served or sold at school

**Date:** January 26, 2023

---

### Summary

In general, AOE believes that Vermont schools could comply with the restrictions in Draft 1.1 of S. 26 without significant challenges. The bill does not currently contain any compliance or enforcement mechanisms. If the Committee would like to add a compliance mechanism, AOE has some recommendations about how to do so in a way that limits additional administrative burden for schools and AOE. We also offer a few ideas for penalties for non-compliance for legislators to consider. Finally, we want to confirm that our understanding of the bill's applicability to certain situations aligns with the Committee's intent, and we offer some additional considerations if the legislature were to consider adding additional restrictions to the bill.

### Background

AOE Child Nutrition Programs staff spend a significant amount of time reviewing Vermont school meals menus, as well as recipes and product ingredient/nutrition labels for school meals and all other foods sold in schools ("smart snacks"). We are monitoring to ensure that schools are meeting the federal nutrition standards required to receive federal funds for school meals. Federal regulations for school meals and "smart snacks" include strict limits on sodium and saturated fat. Grains must be whole grain, and students are required to select at least a ½ cup of fruits and vegetables as part of their school meals. Additional restrictions on added sugars have begun to go into effect this school year. However, these federal regulations do not currently limit food dyes or additives.

Vermont school meals programs typically emphasize scratch cooking and local foods and go beyond the federal nutrition standards. In AOE's extensive reviews of school meals programs, we rarely see artificial food dyes in Vermont school meals, except in some breakfast cereals. We occasionally see artificial food dyes in other foods sold in schools, such as Gatorade Zero products sold in some high school vending machines. We do periodically see two of the other additives under consideration, BHT and TBHQ in school meals and in other foods



sold in schools. These mostly appear in packaged crackers, cereal, sausage patties, and pepperoni.

Other states have either recently adopted restrictions on these dyes and additives or have bills under active consideration. As a result, national manufacturers have already reformulated many products to remove these additives, and we anticipate that additional replacement products formulated specifically for school meals programs will be available by the enactment date, although there may be some increase to product cost.

We do not commonly see the remaining additives included in the bill (ADA, Potassium Bromate, Propylparaben, and Titanium Dioxide), so we do not anticipate the schools will have difficulty complying with those restrictions.

When the committee first took up S. 26, a witness asserted that AOE supported this bill. We want to clarify that we have not taken a position in support of or opposition to the bill. Last year, we commented to a reporter that we did not think school meal programs would have difficulty complying with the proposed ban on artificial food dyes because these dyes are not commonly found in Vermont school meals. That remains our opinion.

## Recommendations

Draft 1.1 of S. 26 does not include any compliance mechanisms or penalties for non-compliance. An absence of these mechanisms will lead to uneven implementation. However, an overly onerous compliance process could add significant administrative burden and costs to both schools and the Agency of Education.

- The committee should consider aligning the compliance mechanism with the federally-required Administrative Review work that AOE Child Nutrition Programs already conducts, to reduce administrative burden for schools and for the AOE in monitoring for compliance. AOE recommends that a compliance review be limited to the menus and product labels otherwise required to be submitted as part of the federally required school meals administrative review.
  - These reviews are conducted every 3-5 years for each SU/SD. In addition to reviewing menus and product labels for school meals, we also review labels for any other food sold to students during the school day for compliance with the federal smart snack requirements.
  - Aligning a compliance review for this requirement with the documents that are already submitted for the administrative review would provide for a robust review process without adding an additional paperwork submission burden for schools.
  - Assuming the list of prohibited ingredients remains limited to the products in Draft 1.1, AOE staff could add this additional check to the existing review with minimal additional labor.
- If the committee wishes to add penalties for non-compliance, they could consider the following options:

- Required corrective actions as assigned by AOE or specified in the legislation. Examples of typical corrective actions would be submitting a plan for how the entity would come into compliance, or providing attestations or other documentation demonstrating that the product is no longer being used.
- Providing public notice or notice to households that the entity is out of compliance with this requirement.
- A financial penalty, such as ineligibility for the state universal meals supplement for a certain period of time. AOE does not recommend this for a first offense. The federal child nutrition programs typically only require fiscal action for repeat findings.
- Note that Federal funds cannot be withheld for non-compliance with state-specific requirements.

## **Clarification on Applicability**

We want to confirm that our understanding of the applicability of S. 26 to certain programs and school types aligns with the Committee's intent.

Draft 1.1 applies only to breakfast, lunch, and foods sold to students during the school day. Many schools operate other federal child nutrition programs to provide after school and summer meals. As written, the legislation would not apply to these programs:

- The After School Snack Service is offered by some schools participating in the National School Lunch Program.
- At-Risk After School Meals through the Child and Adult Care Food Program is offered by schools, childcare centers, or other community organizations.
- The Seamless Summer Option can be offered by schools, but is not currently offered by any Vermont schools due to its lower reimbursement rate.
- The Summer Food Service Program can be offered by schools, local governments, or non-profit organizations.

Under federal regulations, both state-approved and state-recognized independent schools can participate in the federal school meals programs, as long as they are not-for-profit. 24 state-approved independent schools participate in Vermont. One state-recognized independent school participates in Vermont, although they are ineligible for the state universal meals supplement. The remaining state-approved and state-recognized schools do not participate in the federal school meals programs.

Draft 1.1 would only apply to approved independent schools that participate in the federal school nutrition programs. AOE does not currently have any oversight of meals offered by independent schools that do not participate in the federal child nutrition programs. Draft 1.1. would not apply to any state-recognized independent schools, including those that participate in the federal child nutrition programs.

## **Additional Considerations**

If the legislature were to choose to add additional additives to the bill, AOE would appreciate the opportunity to weigh in on whether those additives are currently commonly used and would present added costs and compliance difficulties for Vermont schools. While Vermont schools do a significant amount of scratch cooking, many schools rely on some pre-packaged foods in order to offer breakfast in the classroom or grab-and-go breakfast after the bell. Vermont law encourages schools to offer these breakfast models as a way of ensuring these meals are easily available to support our most vulnerable students. AOE has some concerns that aggressive limits on packaged or processed foods could cause some schools to stop offering these breakfast models.

In addition, given the very limited federal and state funding provided to produce breakfast, more aggressive measures could result in school districts incurring additional local costs to produce these meals. Currently, Vermont school meals programs receive \$2.46 in federal and state funds for each breakfast served. These funds must cover food, labor, supplies, equipment, and often trash/compost, utilities and benefits such as health insurance. Planning menus that can be produced within this budget can be challenging, and school menu planners weigh labor savings and product cost carefully. We think that school meals programs could find affordable pre-packaged products that comply with the restrictions in the current version of the bill, but we caution legislators to consider these factors if additional limits are under consideration.

## **Additional Background on AOE Support for Scratch Cooking**

The Agency of Education provides significant support and encouragement to school meals programs in increasing scratch cooking and reducing reliance on processed foods. These efforts include:

- Offering free culinary trainings (including knife skills and mise en place) annually as part of our [Summer Institute Conference](#).
- Using USDA Farm to School State Formula Grant funds to promote local foods through technical assistance, regional workshops, and other training and networking opportunities.
- Publishing a [seasonal cycle menu toolkit](#) which includes a 6-week cycle menu for breakfast and lunch. The toolkit offers a Fall, Winter and Spring menu that highlights local foods. It includes standardized scratch recipes and was developed by Vermont School Food Service Directors based on successful menus at model food service programs across the state keeping staffing, cost, and student acceptability in mind. This toolkit is available for free on our website for any program that would like to use it.
- Providing all Vermont schools with free printed copies of Vermont's "[New School Cuisine](#)" cookbook of scratch recipes developed by Vermont school food service staff featuring local foods.

- Recently removing barriers to the [state school meals equipment grant](#) that were preventing programs from applying, including removing the matching requirement, and increasing the maximum award amount.
- Providing technical assistance around opportunities for efficiencies and best practices, and other tailored suggestions to reduce reliance on lower quality packaged products during administrative reviews.
- Providing specific training and templates to assist schools with offering salad bars.
- Managing the federal [Fresh Fruit and Vegetable Program](#) to provide funding to help schools expose students to a wide variety of unprocessed fruits and vegetables.
- Providing optional template language around meal quality that schools utilizing FSMCs can add to their RFPs to encourage higher quality, scratch cooked, and local foods from their vendors.
- Publishing [clear guidance](#) on how school meals programs with excess funds can use those funds to improve their kitchen facilities.
- Managing the state's Local Foods Incentive and providing training and technical assistance to schools in how to receive that funding. See our recent [Legislative Report](#) for more on the success of this program.