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Competitive Foods and Beverages

Nutrition Services Division Management Bulletin

Purpose: Policy, Beneficial Information

To: National School Lunch Program and School Breakfast Program Sponsors

Number: SNP-11-2015

Date: May 2015

Attention: County and District Superintendents, Chief Business Officials, Food Service Directors, Parent–Teacher Association President, Associated Student Body Directors, and other Parent and Student Group Leaders

Reference: California *Education Code*, sections 49430–49434; Title 5, *California Code of Regulations*, sections 15575–15578; Title 7, *Code of Federal Regulations*, Section 210.11

Supersedes: Management Bulletins 00-810, 05-109, 05-110, 06-110, NSD-SNP-08-2008, USDA-SNP-06-2009, NSD-SNP-01-2010, NSD-SNP-03-2010, USDA-SNP-18-2011, SNP-03-2014 Information Alert USDA-SNP-03-2008

Subject: Competitive Foods and Beverages: Summary and Overview of State and Federal Rules

This Management Bulletin (MB) from the California Department of Education (CDE) Nutrition Services Division (NSD) summarizes the updated state and federal competitive food and beverage (competitive food) rules and supersedes the following MBs and Information Alerts (IA):

- MB 00-810, August 2000: contains a summary of the U.S. Department of Agriculture (USDA) Foods of Minimal Nutritional Value (FMNV) requirements, repealed as of July 1, 2014, and a summary of state and federal competitive food rules, which are updated in this MB
- MB 05-109, August 2005: contains a summary of competitive beverage requirements, which are updated in this MB

- MB 05-110, June 2005: contains a summary of FMNV requirements, which have been repealed
- MB 06-110, August 2006: contains a summary of competitive food requirements, which are updated in this MB
- MB NSD-SNP-08-2008, September 2008: contains a summary of competitive food requirements, which are updated in this MB
- IA USDA-SNP-03-2008, September 2008: provides a list of FMNV exemptions, which have been repealed
- MB USDA-SNP 06-2009, February 2009: contains information on FMNV requirements, which have been repealed
- MB NSD-SNP-01-2010, April 2010: contains information regarding state and local educational agency roles in controlling competitive food sales, which are updated in this MB
- MB NSD-SNP-03-2010, August 2010: defines a school with students from kindergarten through eighth grade as a middle school, which is reiterated in this MB
- MB USDA-SNP-18-2011, August 2011: contains information on FMNV, which has been repealed
- MB SNP-03-2014, April 2014: explains competitive food changes due to Assembly Bill 626 (Skinner, 2013), which are included in this MB

These documents are no longer accessible on the CDE Web site.

Smart Snacks in School

The Healthy, Hunger-Free Kids Act of 2010 required the USDA to establish nutrition standards for all foods and beverages sold to students outside the federal reimbursable meal program throughout the school day and on the school campus. Through this authorization, the USDA created national competitive food regulations, known as Smart Snacks in School (SSIS), which became effective on July 1, 2014.

The federal SSIS requirements apply to all schools and school districts across the nation participating in the National School Lunch Program (NSLP) or School Breakfast Program (SBP). As of July 1, 2014, the FMNV regulations were repealed and replaced with the SSIS regulations.

Integration of the Competitive Food Rules

The SSIS rule integrates with current California competitive food rules, which originate and set forth in:

- California *Education Code (EC)*, sections 49430–49434
- Title 5, *California Code of Regulations (5 CCR)*, sections 15500–15501
- Sections 15575–15578 of 5 *CCR*
- Title 7, *Code of Federal Regulations (7 CFR)*, Section 210.11

Implementation and enforcement dictate that the stricter rule, be it state or federal, takes precedence. In situations where there is no stricter rule between state and federal standards, both sets of rules are combined and followed. School districts should review the actual laws, regulations, and policies to ensure compliance.

How to Find Each Set of Rules

The competitive food and beverage rules for California schools are found in the *EC*, *CCR*, and *CFR* at the Web sites below:

- *EC* sections 49430–49434 are available on the California Law *EC* Web page at <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=edc>.
- Sections 15500–15501 and 15575–15578 of 5 *CCR*, under Division 1, Chapter 15, are available on the Office of Administrative Law *CCR* Web site at <http://ccr.oal.ca.gov>.
- Part 210 of 7 *CFR* is available on the U.S. Government Publishing Office Electronic *CFR* Web site at <http://www.ecfr.gov>.

Summary of the Competitive Food Rules

1. How, where, and when do the competitive food rules apply?

A competitive food is a food or beverage in which the following five criteria must be met in order to have a competitive food sale: (1) sold, (2) to a student, (3) on the school campus,

(4) during the school day, and (5) outside of the federal reimbursable meal program (7 *CFR*, Section 210.11[a][2]). If all five criteria are not met, it is not a competitive food sale and the competitive food rules do not apply.

Sold means the exchange of a food or beverage for money, coupons, vouchers, or orders. To find additional information on applying the definition of sold, please visit the CDE Competitive Foods and Beverages Definition of Sold MB Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp282014.asp>. If there is no physical exchange of a food or beverage, it is not a competitive food sale and the rules do not apply.

School campus means all areas of the property under the jurisdiction of the school that are accessible by students during the school day (7 *CFR*, Section 210.11[a][4]).

School day means the period from midnight before to 30 minutes after the end of the official school day (7 *CFR*, Section 210.11[a][5]).

All foods sold as part of the SBP or NSLP are not subject to the competitive food rules.

The state and federal rules do not apply to foods given away (for example: celebrations, birthday parties, etc.). Additionally, there may be food or beverage sales that are in competition with the federal reimbursable meal program but are still allowable. Meeting the standards of competitive foods means that the foods or beverages must meet specific criteria to be sold during the school day. Deeming a food or beverage competitive does not automatically disallow the sale of the item. Per 7 *CFR*, sections 210.11(b) and 220.12, state agencies and school food authorities (SFA) may impose additional restrictions on the sale of and income from competitive foods, provided they are consistent with federal requirements.

2. To what types of schools do the competitive food rules apply?

Any school that participates in the SBP or NSLP (public, charter, or private schools) must follow the federal SSIS rule (7 *CFR*, Section 210.11). All public schools must follow the California competitive food rules (*EC* sections 49430-49434 and *CCR* sections 15575-15578). Therefore, a private or charter school that participates in the SBP and NSLP must follow SSIS but is not required to follow the California competitive food rules cited in this paragraph. All public elementary, middle, and high schools that participate in the SBP and NSLP must follow both California and SSIS rules. Please note that each school level has distinct state and federal requirements. *EC* Section 49430 provides definitions for elementary school, middle school, and high school.

According to the definitions, a school with students from kindergarten through eighth grade, inclusive, is considered a middle school for all state and federal competitive food rules. The CDE encourages kindergarten through eighth grade schools, and other schools with a combination of elementary and middle school grades, to apply the stricter elementary school rules to the lower grades and the middle school rules to the upper grades.

3. To whom do the competitive food rules apply?

Any entity, group, or individual that sells a food or beverage to a student on an elementary, middle, or high school campus, during the school day, and outside of the federal reimbursable meal program must comply with the competitive food rules.

Sections 15500–15501 of 5 CCR are competitive food rules that apply only to foods and beverages sold to students by student organizations. A student organization is defined as a group of students who do not have an academic or curricular affiliation with a school or district. For example, an extracurricular club (e.g., Associated Student Body, Math Club, Spanish Club, etc.) is considered a student organization. Other groups that may include student involvement but have an academic or curricular affiliation—such as regional occupational programs, culinary institutes, home economics and/or food classes, and special day classes—are not considered student organizations.

A student organization selling foods or beverages to students must follow all competitive food rules including 5 CCR sections 15500–15501; a nonstudent group (e.g., a Parent–Teacher Association) must follow all competitive food rules except 5 CCR sections 15500–15501. According to sections 15500–15501 student organizations: (1) cannot prepare foods or beverages on school campus, (2) cannot sell the same items or categories that are sold by the food service program, (3) are restricted in the number of sales during the school day, and (4) are restricted in the types or categories of foods and beverages they can sell.

4. What competitive food rules apply?

The Quick Reference Cards—Public Schools, located on the CDE Competitive Foods and Beverages Web page at <http://www.cde.ca.gov/ls/nu/he/compfoods.asp>, provide a summary and integration of California and SSIS rules including EC sections 49430–49431.7, 5 CCR, sections 15500–15501, 5 CCR sections 15575–15578, and 7 CFR 210.11. These rules apply to all public, noncharter schools participating in the NSLP or SBP.

The Quick Reference Cards—Charter or Private Schools, also located on the CDE Competitive Foods and Beverages Web page at <http://www.cde.ca.gov/ls/nu/he/compfoods.asp>, provide a summary of the SSIS rules from 7 CFR, Section 210.11 and do not include the California EC or CCR rules. These rules apply to all charter or private schools participating in the NSLP or SBP. Charter and private schools are not required to follow California EC or CCR and therefore are not obligated to follow the California competitive food rules. Additional information for the SSIS rule can be accessed on the USDA Food and Nutrition Service (FNS) Healthier School Day Web page at <http://www.fns.usda.gov/healthierschoolday/tools-schools-smart-snacks>.

5. Fundraising

California requires that all competitive foods and beverages meet applicable standards; therefore, California does not allow any exempted food or beverage fundraisers during the school day. Fundraisers can still occur during the school day, but they must follow all applicable state and federal competitive food rules. For additional information regarding fundraisers, please visit the CDE Grain Entrées/Fundraisers Related to Smart Snacks Web page at <http://www.cde.ca.gov/ls/nu/sn/mbsnp252014.asp>.

6. Recordkeeping

According to 7 CFR, Section 210.11(b)(2), the school district is responsible for ensuring that each group or individual selling competitive foods maintain records that demonstrate compliance with competitive food and beverage requirements. This section states: “[a]t a minimum, records must include receipts, nutrition labels and/or product specifications for the competitive food available for sale to students.” Additional documentation, such as ingredient lists or nutrient analysis may be necessary to demonstrate compliance with the competitive food and beverage requirements.

7. Monitoring and Enforcement

According to 7 CFR, Section 210 and EC Section 49434 the NSD is required to monitor and enforce all state and

federal competitive food rules during the Administrative Review. While there is no fiscal action taken for noncompliance with competitive food or beverage regulations, if infractions are not corrected in a timely manner, the NSD does have authority to withhold SNP reimbursements until the district or SFA corrects the identified issues.

Additional Policy and Guidance

For updates to the summary of competitive food requirements, frequently asked questions, recorded Webinars, Quick Reference Cards, MBs, and additional resources, please visit the CDE Competitive Foods and Beverages Web page at <http://www.cde.ca.gov/ls/nu/he/compfoods.asp>.

The USDA has information specific to the federal SSIS located on the USDA FNS Healthier School Day Web page at <http://www.fns.usda.gov/healthierschoolday/tools-schools-smart-snacks> and the USDA Team Nutrition SSIS in School Resources Web page at <http://healthymeals.nal.usda.gov/smartsnacks>. The Questions and Answers Related to the SSIS Interim Final Rule—Revised can be found in the USDA Policy Memo SP 23-2014 (v.3) on the USDA School Meals Policy Web page at <http://www.fns.usda.gov/school-meals/policy>. Please note that these USDA SSIS Questions and Answers do not account for any stricter requirements found in California regulations. These USDA SSIS Questions and Answers will be integrated into the Frequently Asked Questions page found on the CDE Competitive Foods and Beverages Web page.

Contact Information

If you have any questions regarding this MB, please contact the competitive foods and beverages team by e-mail at COMPETITIVEFOODS@cde.ca.gov.

Questions: [Nutrition Services Division | 800-952-5609](#)

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MB SNP-13-2016 referencing U.S Department of Agriculture Food and Nutrition Service Policy Memorandum SP 29-2011.

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