




FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER ADAM H. PUTNAM

TECHNICAL ASSISTANCE NOTE

No. 2014-01
Contact: Robin Safley
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DATE: Friday, July 18, 2014

TO: Sponsors of School Nutrition Programs

FROM: Robin Safley,  Division Director
Food, Nutrition, and Wellness

SUBJECT: Florida Competitive Food Rule Guidance and Question & Answer: 5P-1.003

The Healthy, Hunger-Free Kids Act of 2010 required the United States Department of Agriculture (USDA) to establish nutrition standards for all foods sold in schools -- beyond the federally-supported school meals programs. The USDA issued proposed rules in the Federal Register on February 8, 2013, and accepted public comment. On June 28, 2013, the USDA issued an interim final rule on this subject with the standards effective July 1, 2014. This rule requires that food and beverage items sold during the school day meet the nutrition standards for competitive foods, but also allows for special exemptions for the purposes of conducting infrequent, school-sponsored fundraisers. The rule also includes a mandate for state agencies to either establish the number of allowable exempt fundraisers, which do not meet the nutrition standards or if the State does not take action to allow for fundraising exemptions, then fundraising that does not meet the federal nutrition requirements will be prohibited.

Based on the USDA rule, the Department, in collaboration with a diverse cohort of stakeholders, drafted a rule through feedback from surveys, workshops, and a hearing for the sale of all food and beverages sold during the school day.

As a result, a proposed rule was published in the Florida Administrative Register (FAR) on June 11, 2014, a notice of change to the proposed rule was published in the FAR on July 14, 2014 & July 18, 2014, and adopted for final rule thereafter.

The rule as adopted, amends the current rule to require that competitive food and beverage items sold to students during the school day must meet the nutrition standards for competitive food as defined and required in 7 CFR 210.11. The rule prohibits the sale of competitive food items sold to students during the school day that consist of ready-to-eat combination foods of meat or meat

alternate and grain products unless being sold by the food service program. The rule permits each district school board to grant a special exemption from the nutrition standards for competitive foods as required in 7 CFR 210.11 for the purpose of conducting infrequent school-sponsored fundraisers. The rule defines the term "school-sponsored fundraiser," and requires the establishment of a Healthy School Team by each school for the purposes of supporting the efforts of each school district.

Questions and Answers

1. Q. Are vending machines, school stores, and/ or snack bars considered fundraising for the purposes of this rule?

A. No. Vending machines, school stores, and/or snack bars are not considered "school-sponsored fundraisers," consistent with 7 CFR 210.11. All food sold in a vending machine, school store or snack bar must meet the nutrition standards for competitive foods as defined in 7 CFR 210.11, cannot consist of ready-to-eat combination foods of meat or meat alternate and grain products, and can be sold at any time during the day.

2. Q. Do food and beverages sold to students during the day have to meet the nutrition standards?

A. Yes. Food and beverages sold to students during the school day must meet the nutrition standards for competitive food as defined and required in 7 CFR 210.11

3. Q. Can competitive foods be sold to students during the school day that consist of ready-to-eat combination foods of meat or meat alternate and grain products such as pizza, hot dogs, hamburgers, etc.?

A. Competitive foods being sold to students during the school day that consist of ready-to-eat combination foods of meat or meat alternate and grain products can only be sold by the food service program.

4. Q. Does the rule apply to foods that are not being sold such as cupcakes provided by a parent at no charge?

A. No. This rule only applies to foods being sold to students during the school day.

5. Q. When are school sponsored food fundraisers allowable?

- A. School-sponsored food fundraisers which **meet** the nutrition standards as defined and required in 7 CFR 210.11 are permitted to occur on any school day provided it is thirty (30) minutes after the conclusion of the last designated meal service period.
- B. School-sponsored food fundraisers which **do not meet** the standards must be granted a special exemption by the district school board not to exceed the maximum number of school days per school campus each school year as shown in the rule. These fundraisers are not permitted to occur until thirty (30) minutes after the conclusion of the last designated meal service period.

6. Q. Who is responsible for maintaining records documenting exempted school-sponsored fundraisers?

- A. Each district school board is responsible for maintaining records documenting the occurrence of any exempted school-sponsored fundraisers to demonstrate compliance with the rule.

7. Q. Why are Healthy School Teams being required?

- A. The Healthy School Team model will help ensure successful execution of the February 2014 proposed rule on *Local School Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010*.

8. Q. What is the deadline for establishing a Healthy School Team?

- B. The deadline for the establishment of Healthy School Teams is June 30, 2015.

NOTICE OF CHANGE

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF FOOD, NUTRITION AND WELLNESS

RULE NUMBER:

RULE TITLE:

5P-1.003

Responsibilities for the School Food Service Program

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 40, No.113, June 11, 2014 issue of the Florida Administrative Register.

5P-1.003 Responsibilities for the School Food Service Program.

(1) No change.

(2)(a) through (b) No change.

(c) To control the sale of food and beverage items in competition with the district approved food service program in accordance with 7 CFR 210.11, which is hereby adopted and incorporated by reference and available online at <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. Competitive food and beverage items sold to students during the school day ~~must~~ which meet the nutrition standards for competitive food as defined and required in 7 CFR 210.11 ~~shall not be sold on any school campus until one (1) hour after the conclusion of the district school food service program's last designated meal period unless the items are being sold by the district school food service program during its designated meal service periods.~~ Unless being sold by the district school food service program, it is impermissible for any competitive food item sold to students during the school day to consist of ready-to-eat combination foods of meat or meat alternate, as defined in 7 CFR 210.10, and grain products as defined in 7 CFR 210.11. Section 7 CFR 210.10 is hereby adopted and incorporated by reference and available online at <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. Each district school board is permitted to grant a special exemption from the ~~nutrition~~ standards for competitive foods as as specified above ~~required in 7 CFR 210.11~~ for the purpose of conducting infrequent school-sponsored fundraisers, not to exceed the following maximum number of school days per school campus each school year:

School Type	Maximum Number of <u>School Days Allowed for Exempted-Competitive-Food-To Conduct Exempted Fundraisers</u>
Elementary Schools	0 <u>5</u> days
Middle School/Junior High Schools	=10 days
Senior High Schools	=15 days
Combination Schools	=10 days
<p>Elementary Schools: Schools providing regular or other instruction at one or more grade levels from PK through grade 5. This category includes schools serving grade 6 if also serving one or more grades PK through 5 (e.g., a K-6 school).</p> <p>Middle/Junior High Schools: Schools providing regular or other instruction in middle school configurations (grades 6-8) and junior high school configurations (grades 7-9). This category also includes schools serving a single grade in the 6-8 range (e.g., a 6th grade center).</p> <p>Senior High Schools: Schools providing regular or other instruction at one or more grade levels from 9 to 12. This classification includes 9th grade centers.</p> <p>Combination Schools: Schools providing regular or other instruction in grade groupings that include more than one of the categories described above (e.g., PK-8, 6-12, K-12, etc.).</p>	

Each district school board shall maintain records documenting the occurrence of any exempted school-sponsored fundraisers to demonstrate compliance with this rule. No school-sponsored fundraisers, which include the sale of food items, shall be permitted to occur until thirty (30) minutes after the conclusion of the last designated meal service period. For the purposes of this section, "school-sponsored fundraiser" shall be defined as any event or activity occurring on the school campus during which currency, tokens, tickets, or the like are exchanged for the sale or purchase of items or services to benefit the school, a school organization or group, or a charitable organization, and which is authorized according to district school board policy and has been approved by the school principal or designee. ~~Each district school board shall maintain records documenting the occurrence of any exempted competitive food fundraisers to demonstrate compliance with this rule. In the absence of a Healthy School Team the Local~~

~~Educational Agency shall maintain records demonstrating compliance in accordance with 7 CFR 210.11~~

(d) ~~To encourage each school to establish a Healthy School Team by June 30, 2015, for all schools under its jurisdiction in accordance with 42 U.S.C. 1758b, which is hereby adopted and incorporated by reference and available online at <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>.~~ Any Healthy School Team should include, but not be limited to, the following stakeholders: parents, students, school food service program representatives, school administrators, school health professionals, physical education teachers and the public ~~as provided in 42 U.S.C. 1758b(b)(3). In addition to the requirements specified in 42 U.S.C. 1758b, a~~ Healthy School Team shall: ~~should, at a minimum,~~

~~1. Be~~ 1. Be responsible for ensuring compliance with paragraph (c) of this rule and 7 CFR 210.11 as it relates to competitive food and beverage items sold on a school campus ~~campuses;~~

~~2. Maintain~~ 2. Maintain maintaining a school calendar identifying the dates when exempted competitive food fundraisers will occur in accordance with the frequency specified in paragraph (c) of this rule; and

~~3. Report~~ 3. Report reporting its school's compliance with this rule to the designated Local Educational Agency official or school official responsible for overall compliance with the Local Educational Agency's wellness policy as required in 42 U.S.C. 1758b(b)(5)(B). ~~In the absence of a Healthy School Team the Local Educational Agency shall maintain records demonstrating compliance in accordance with 7 CFR 210.11.~~

(e) through (l) No change.

(3) through (4) No change.

Rulemaking Authority 570.07(23), 595.404(3), (9) FS. Law Implemented 595.404(1), (3), (4) FS. History--Amended 3-26-66, 4-17-72, 4-19-73, 10-20-73, Revised 6-17-74, Repromulgated 12-5-74, Amended 5-4-76, 10-18-77, 12-11-79, 1-7-81, 7-28-81, 9-23-81, 6-28-83, 10-15-84, 7-10-85, Formerly 6A-7.42, Amended 5-3-88, 5-16-90, 6-30-92, Formerly 6A-7.042, Amended 10-11-99, 1-25-00, Formerly 6-7.042, 6A-7.0411, Amended _____.