

Questions/Answers from Colorado CDE Directors Conference 02/21/13- Proposed Rule Presentation

1. If selling pizza or cheeseburgers, if pizza or cheeseburgers is greater than 35% would we not be able to sell it A La Carte? **Page 9563 of the Proposed Rule (in the Federal Register) indicates in section C under (Exemption for Reimbursable Meal Entrees and Side Dishes), “As noted previously, many of the food items sold a` la carte are entree’s or snacks that are also served as part of a reimbursable meal. The proposed rule provides three alternative standards for NSLP menu items sold a` la carte. The first would allow NSLP entree’s and snacks to be sold any time as an a` la carte food as long as they meet the fat and sugar standards in the proposed rule. The other two alternatives have to do with the menu cycle; providing NSLP entree and snack items to be sold (1) on the same day they were served as part of a reimbursable meal, or (2) within four days of being served as part of a reimbursable meal. The primary benefit of an exemption that is limited to foods on the current day’s menu is that those items could be offered a` la carte no more often than they could be served in reimbursable meals without exceeding weekly NSLP or SBP restrictions on average calories, fat, or sodium. This more limited exemption would also encourage students to consume a greater variety of foods, even if they choose foods consistently from the a` la carte line. However, an exemption that is limited to entrees and side dishes on the current day’s menu could complicate meal planning and preparation by denying schools the ability to serve leftover items on the next school day. The primary benefit of an exemption within four operating days of its offering in an NSLP or SBP menu is that it would ease school planning and increase efficiency by allowing the service of leftover items more flexibly. However, it could discourage variety in student consumption, and may tend to increase consumption of entrees higher than average in calories, fat, and sodium that in the school meals programs are balanced by other offerings during the week.”**
2. Concession stands not used during meal service. If open before 330 does it still have to meet the guidelines? MPRO Response – **Yes**
3. Accompaniments same as NSLP? Because the NSLP does not require? How is this going to work? Exp was Cheeseburger A LA Carte? **Page 9536 of the Proposed Rule indicates that if any side dish or snack item sold ala carte must be 200 calories or less including the any accompaniments added. The Rule also indicates, “Use of accompaniments should be limited when food is sold to students in school. All accompaniments shall be pre-portioned and must be included in the nutrient profile as a part of the item served and meet all proposed standards...” and page 9556 of the Rule indicates in Section (n) under (Accompaniments), “The use of accompaniments shall be limited when competitive food is sold to students in school. All accompaniments to a competitive food item shall be proportioned and the ingredients of such accompaniments must be**

included in the nutrient profile as a part of the food item served and shall meet all of the nutritional standards for competitive food as required in this section.

4. Is this program only for schools participating the NSLP or SBP? **Yes**
5. Most School districts have jurisdictional control on items sold. The NSD (Nutrition Services Dept) does not have control and should not be responsible for any fiscal action- the concern is if or when the review requirements will penalizes the NSD- MPRO Response – **We, The MPRO, has heard from the National Office folks that FNS HQ is working with Dept of Ed to spread the rule among the professional organizations working with the schools to make sure they are aware and inform everyone involved in the school process they have the opportunity to be able to make comments.**
6. How will FNS consider food sold as a reward? ***MPRO has provided this comment to the FNS National Office, and is awaiting feedback.***
7. Is USDA going to look at the administrative cost of implementing the program? If the NSD is buying, the School District will have to oversee the program. **Page 9549 of the Rule discusses Administrative Costs to States and SFAs, by indicating the following: “It is anticipated that the administrative cost to 57 State agencies, 101,000 schools, and 21,000 SFAs will total \$124 million over five years (or about \$245 per school per year on average).” On page 9559 of the Rule, there is a chart that estimates the administrative cost that States and SFAs will incur as a result of the directives in this Rule.**
8. Regarding collecting and retaining documentation associated with competitive foods sold outside of the food service program, will the same rules apply or is there going to be new rules for this documentation? Specifically, does labels, receipts, and etc. have to be handled and kept on file by the school program or will it be the responsibility of the food service department? ***MPRO has provided this comment to the FNS National Office, and is awaiting feedback.***

A CO Food Service Director asked a question regarding selling competitive coffee drinks with a Keurig coffee machine in schools. Specifically, a student group wants to sell coffee drinks in the school library, which isn't far from the cafeteria. The group wants to use a Keurig machine, and they think that this will be allowed under the “mechanically vended” definition. The concern is that this is not “mechanically vended” (e.g. a coin operated machine.), but rather a Keurig machine is just like an espresso machine in that it is pre-measured and requires a human server operator, and allowing this may significantly the NSLP as students will spend \$1.50 on coffee instead of \$1.50 on a NSLP lunch, a less nutritious product. **In existing Federal Guidance, as well as in the newly Proposed Competitive Food Rule, there are no restrictions on the sale of caffeinated drinks (outside of what is excluded as a Food of Minimal Nutritional Value item) to high school students, to include**

coffee. Current U.S. Department of Agriculture (USDA) regulations on competitive foods does place limits on the availability of foods of minimal nutritional value (FMNV) in foodservice areas during meal times, as well as provides a definition of these food items, as indicated in the Code of Federal Regulations, Title 7, Part 210.11, Appendix B. USDA also mandates the use of Local School Wellness Policies by Program operators. On June 30, 2004, Congress enacted the 2004 Child Nutrition and WIC Reauthorization Act (Section 204-Wellness Policy) , all schools in the nation that participate in the National School Lunch Program, School Breakfast Program, or Special Milk Program must adopt a Local School Wellness Policy Guidance. This can be more clearly explained in USDA Policy Memo SP 42-2011 (Local Wellness Policies Guidance).

The Federal regulations allow States and local school districts to adopt stricter policies on access to competitive foods, and different States have in fact adopted different rules and policies.

In Colorado, State Board Rule 08-129 (Rules for Administration of Healthy Beverages) enacted in 2008, and a subsequent statute (Colorado Statute 22-32-136).

The USDA does not provide guidance on the term “mechanically vended” for the purpose of setting guidelines on local wellness and competitive food policies as this term was initiated in by the Colorado Department of Education Board or other relevant Colorado legislation. Clarification of this definition, and its limits (including inclusions and exclusions) should be sought from the respective school district, Colorado Department of Education, respective State Board officials, or State legislative body.

As a food service director, I can see your concern with this issue. Our office has seen that many school districts struggle with ensuring their programs are sustainable, and we recognize that this can be challenging or even difficult when considering outside snack, food, and beverage sales sold in competition to foods and beverages offered by the food service department. It appears that no competitive food is allowed to be sold to students during the lunch hour with the exception of vending machines, per Colorado State rules. If the thought is that this machine does not meet the definition of a “vended machine”, in which the sale of the coffee would then be excluded by , then I would encourage putting forth the concern to school officials or school board to see if this equipment is in fact excluded by definition.