

## Summary of Requirements for Foods & Beverages Sold in California Schools

*The following is a summary of requirements for food sales in California schools. This summary is for foods other than meals that meet USDA-approved School Breakfast Program (SBP) or National School Lunch Program (NSLP) meal pattern requirements.*

### I. Elementary Schools

The only **foods**, in addition to the USDA reimbursable meals, that may be sold “during the school day” in elementary schools, **effective July 1, 2007** (Ed. Code 49431) are:

“Individually sold portions” of

- Nuts, Nut Butters, and Seeds
- Eggs
- Cheese packaged for individual sale
- Fruit
- Vegetables (except any deep fried vegetable is not allowed)
- Legumes
- Dairy or whole grain items that contain **no more than the following** in each individually-sold food item:
  - 35% of calories from fat;
  - 10% of calories from saturated fat;
  - 35% of total weight from sugar (naturally occurring and added sugar); and
  - 175 Calories.

The only **beverages** that may be sold “regardless of the time of day” in elementary schools, **currently (was effective July 1, 2004**, Ed. Code 49431.5) are:

- Fruit-based drinks that are composed of no less than 50% fruit juice and have no added sweetener (added sweetener is any additive that enhances the sweetness of the beverage, including added sugar or artificial sweetener, but does not include the natural sugar contained within the fruit juice);
- Vegetable-based drinks that are composed of no less than 50% vegetable juice and have no added sweetener;
- Drinking water with no added sweetener; and/or
- Two-percent-fat milk, one-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk products.

**For school fundraising events, exceptions** to the above food and beverage sale requirements are:

Elementary schools may permit the sale of foods or beverages that do not comply with the above requirements if the items are **sold by pupils** of the school and the sale takes place:

- Off of and away from the school premises; or
- At least one-half hour after the end of the school day.

**In addition, the following are specific requirements for student food sales in elementary schools (California Administrative Code, Title 5, s 15500):**

The governing board may approve no more than **four sales per year** of **one** “dessert type” food item (that, up to July 1, 2007, must be from the “nutritious” list, for example ice cream or fruit, see Section III). Effective July 1, 2007, sales must be a “dessert type” item from the new approved list (see above) unless it takes place after school or off-campus. The item selected must **not** be the same as one that is sold in the food service program that day at that school and must not be prepared on the school premises; the sale of this item must take place after the midday food service period.

## II. Middle, Junior, and High Schools

A. The only **foods**, in addition to the USDA reimbursable meals, that may be sold during the school day in middle, junior, or high schools, **effective July 1, 2007** (Ed. Code 49431.2) are:

**“Snacks”** that contain **no more than:**

- 35% of its total calories from fat, except the following foods are exempt from this specific requirement:
  - Nuts, Nut Butters, and Seeds
  - Eggs
  - Cheese packaged for individual sale
  - Fruit
  - Vegetables (except any deep fried vegetable is not allowed)
  - Legumes;
- 10% of its total calories from saturated fat, except the following foods are exempt from this specific requirement:
  - Eggs
  - Cheese packaged for individual sale;
- 35% of its total weight shall be composed of sugar, including naturally occurring and added sugar, except the following foods are exempt from this specific requirement:
  - Fruits or vegetables (unless they are deep-fried; deep fried fruits or vegetables may not be served); and
- 250 Calories.

**Entrée** items that qualify as entrées using USDA meal pattern definitions, and that contain **no more than:**

- 4 grams of fat per 100 calories; and
- 400 Calories.

B. The only **beverages\*** that may be sold “regardless of the time of day” in **middle or junior high schools**, **currently** (was **effective July 1, 2004**, Ed. Code 49431.5) are:

- Fruit-based drinks that are composed of no less than 50% fruit juice and have no added sweetener (added sweetener is any additive that enhances the sweetness of the beverage, including added sugar or artificial sweetener, but does not include the natural sugar contained within the fruit juice).
- Vegetable-based drinks that are composed of no less than 50% vegetable juice/s and have no added sweetener.
- Drinking water with no added sweetener.
- Two-percent-fat milk, one-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk.
- An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving.

C. Standards for **beverages sold in high schools**, **effective July 1, 2009**; in the interim, effective **July 1, 2007**, the following requirements must be met for no less than 50% of all beverages sold (Ed. Code 49431.5).

Only the following beverages\* may be sold to a pupil at a high school from one-half hour before, to one-half hour after, the school day:

- Fruit-based drinks that are composed of no less than 50% fruit juice and have no added sweetener (added sweetener is any additive that enhances the sweetness of the beverage, including added sugar or artificial sweetener, but does not include the natural sugar contained within the fruit juice).
- Vegetable-based drinks that are composed of no less than 50% vegetable juice/s and have no added sweetener.
- Drinking water with no added sweetener.
- Two-percent-fat milk, one-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk.
- An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving.

\*Subject to Federal Competitive Food Requirements (see Section V)

## Middle, Junior, and High Schools, Continued

**Exceptions** to the above food and beverage sale requirements:

- Any **food** items may be sold:
  - Off of and away from the school premises; or
  - On school premises at least one-half hour after the end of the school day; or
  - At and during a **school-sponsored pupil activity** at least one-half hour after the end of the school day.
- At middle and junior high schools, **beverages** that do not comply with B, above, may be sold **as part of a school event**:
  - At and during the school-sponsored event at least one-half hour after the end of the school day; and/or
  - In vending machines, pupil stores, and/or cafeterias later than one-half hour after the end of the school day;
- Middle and junior high schools may sell beverages that do not comply with B, above, in vending machines not later than one-half hour before the start, and not sooner than one-half hour after the end, of the school day.

**In addition, the following are specific requirements for student food sales in middle, junior, and high schools (California Administrative Code, Title 5, s 15501):**

Sales in **middle schools and high schools**: currently, the governing board may permit a pupil organization to sell food items (specifically approved by the governing board) during or after the regular school day, with some restrictions. Incorporating the new state laws, in **middle schools**: pupils currently may only sell the list of approved beverages (B, above), and, after July 1, 2007, only the approved list of foods (A, above), during the school day (see above conditions). Until July 1, 2007, 50% of food (categories/types of food) sales must be from the current “nutritious” list, (see Section III, similar in content to the new list). **High school** requirements are the same as for middle schools, except that on July 1, 2007, **50%** of beverages must be from the approved list B, above, advancing to **100%** of beverages from the approved list B, above, on July 1, 2009; from one-half hour before, to one-half hour after, school.

**For both middle and high schools**, the following requirements for pupil sales will remain in effect:

- Only one pupil organization each school day may sell no more than three types of food or beverage items;
- Any one or more student organizations may conduct no more than four food sales of any food items during a school year in each school, but such sales shall be held on the same four days for any or all organizations;
- The sales during the regular school day are not of food prepared on the premises; and
- The food items sold during the regular school day shall not be the same as any item sold by the district in the food service program at that school during that school day.

USDA and CDE encourage schools to purchase locally produced foods, including wholesome produce from small farmers, to the maximum extent feasible. Farm to school initiatives promote and support strategies for including these foods in the meals and snacks served to children at school (SP 02-18, MB 02-121).

If a school does not have a USDA meal program agreement, one nutritionally adequate\* free or reduced-price meal must be provided for each needy pupil during each school day (Ed. Code 49550).

\*Definition of nutritionally adequate: qualifying for reimbursement under the federal child nutrition program regulations (Ed. Code 49553).



### III. Nutritious Foods (All Grade Levels)

**State law (Ed. Code 38085) requires that a minimum of 50% of any food items,\* offered for sale each school day at any school site by any entity or organization during regular school hours, are selected from the following list** (this is referred to as the list of nutritious foods):

- Milk and dairy products, including cheese, yogurt, frozen yogurt, and ice cream.
- Full-strength fruit and vegetable juices and fruit drinks containing 50% or more full-strength fruit juice, and fruit nectars containing 35% or more full-strength fruit juice.
- Fresh, frozen, canned, and dried fruits and vegetables.
- Nuts, seeds, and nut butters.
- Non-confection grain products, as defined by regulation of the United States Food and Drug Administration, including crackers, breadsticks, tortillas, pizza, pretzels, bagels, muffins, and popcorn.
- Meat, poultry, and fish, and their products, including beef jerky, tacos, meat turnovers, pizza, chili and sandwiches.
- Legumes and legume products, including bean burritos, chili beans, bean dip, roasted soy beans, and soups.
- Any foods which would qualify as one of the required food components of the Type A lunch (note: now replaced by the terminology “reimbursable meal”) which is defined under the National School Lunch Act.

\* "Item" is defined as each separate kind of food offered for sale as a separate unit.

*Schools that do not have more restrictive policies in place should follow this state law until the new, more restrictive, state laws described above commence on July 1, 2007.*

### IV. California School District Governing Board Requirements for Entering or Renewing Nonnutritious Beverage or Nonnutritious Food Contracts (Ed. Code 35182.5)

The governing board of a school district may not permit the district or a school in the district to enter into or renew a contract that grants exclusive or nonexclusive advertising rights; or grants the right to the exclusive or nonexclusive sale of carbonated beverages, nonnutritious beverages, or nonnutritious foods, unless it adopts a policy, after a public hearing of the governing board, to ensure that:

- Internal controls are in place to protect the integrity of public funds;
- Funds raised benefit public education; and
- Contracts are entered into on a competitive basis pursuant to required procedures.

*This law requires that the public, including parents and pupils, have an opportunity to comment on each contract, clearly identified, at a public hearing for policy adoption that addresses:*

- The nutritional value of food and beverages sold within the district;
- The availability of fresh fruit, vegetables, and grains in school meals and snacks, including, but not limited to, locally grown and organic produce;
- The amount of sugar, fat, and additives in the food and beverages discussed; and
- Barriers to pupil participation in school breakfast and lunch programs.

*Each contract must be accessible to the public and cannot contain a confidentiality clause preventing any part of the contract from being public.*

## V. Competitive Food Requirements

For schools with a USDA meal program agreement, federal regulations concerning **Foods of Minimal Nutrition Value (“FMNV”)** also apply (7CFR210.11):

When the state laws (above), which are more restrictive, become effective, they supersede the federal requirements. However, if any of the allowed foods are classified as a FMNV, for example beverages that meet the above standards and are carbonated, they are *not allowed* in the food service area at meal times. Only those “carbonated beverages” that are exempted from being classified as FMNV by USDA\* (such as specific sparkling water brands that received exemptions) will be allowable in the food service area (see definition of “Food Service Area,” below) at meal times. This federal requirement applies to *any* carbonated beverage that is *not* on the exemption list, and therefore (non USDA-exempted) diet sodas, sparkling water, and carbonated juices are currently prohibited in the food service area at meal times under the federal law in all schools; this requirement will continue with the commencement of the high school beverage regulations in 2009.

**Competitive foods** is defined by USDA as any foods sold in competition with the Program to children in food service areas during the meal periods.

**FMNV** is defined by USDA as a food which provides less than 5% of the RDI of each of eight specified nutrients per serving. In other words, it must contain at least one of the following eight nutrients: protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium, and iron.

The categories of FMNV include: soda water, water ices, chewing gum, certain candies, hard candy, jellies and gums, marshmallow candies, fondant, licorice, spun candy, and candy-coated popcorn.

**Food service area** was recently defined by USDA and CDE\*\* as: Any area on the school premises where reimbursable meals are served and/or eaten (either served or eaten, and both served and eaten). When the high school regulations become effective, this will become a moot point, except for the carbonated beverages that meet state requirements and do not have an exemption from USDA (these would be restricted from the food service area, now broadly defined as anywhere food is served and/or eaten).

\*Any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value, and a list of all foods exempted is maintained by USDA.

\*\* Defined through a guideline issued by USDA (APB: SP-01-04); CDE issued MB 05-110 to transmit USDA’s interpretation of food service area. Federal regulations do not specify the definition of food service area, and the authority to define food service area was specifically given to states. MB 05-110 changed California’s previous definition of the food service area, through CDE guidance/interpretation (the definition of **food service area** is not in regulation or law).

**VI. School Wellness Policy** (Section 204, Public Law 08-265): Not later than the beginning of the 2006-2007 school year, school districts participating in USDA’s school meal program shall establish a local “school wellness policy” that, at a minimum:

- Includes goals for nutrition education, physical activity, and other school-based activities designed to promote student wellness in a manner that the district determines appropriate;
- Includes nutrition guidelines for all foods available on the school campus during the school day, with the objectives of promoting student health and reducing childhood obesity;
- Provides an assurance that guidelines for school meals are not less restrictive than those issued by USDA;
- Establishes a plan for measuring implementation of the local wellness policy, including the designation of one or more persons within the district or at each school, as appropriate, charged with operational responsibility for ensuring that the school meets the local wellness policy; and
- Involves parents, students, school food service representatives, the school board, school administrators, and the public in development of the local wellness policy.

*Information and technical assistance shall be made available by USDA, and shall be for guidance purposes only; this technical assistance shall not be construed as binding or as a mandate to schools.*