



DATE: January 16, 2001

SUBJECT: National School Lunch Program/School Breakfast Program:
Foods of Minimal Nutritional Value

TO: Regional Directors
Special Nutrition Programs
All Regions

Healthy People 2010, a set of health goals and objectives developed under the direction of the Secretary of Health and Human Services, include overweight and obesity as one of the 10 leading health indicators due to the alarming rise over the past four decades in the number of overweight children, adolescents and adults. As part of an effort to counteract the rising prevalence of overweight and obesity and improve the quality of students' dietary intake, Healthy People 2010 Objective 19.15 was developed to focus specifically on the school nutrition environment. It charges us to "increase the proportion of children and adolescents, ages 6 to 19 years, whose intake of meals and snacks at school contributes proportionally to good overall dietary quality."

In the last five years, we have established new nutrition standards for school meals as part of the Healthy Meals for Healthy Americans Act of 1994, which requires consistency with the Dietary Guidelines for Americans (DGA). Significant progress has been made toward meeting the new nutrition standards. However, there are still issues that need our attention. For example, the 1994-1996 data from the Continuing Survey of Food Intakes by Individuals reveal that the vast majority of children fail to meet the dietary recommendations for daily intake of saturated fat, total fat, fiber and sodium and fail to consume the recommended milk group servings. The data also show that on a given day teenagers drink more soda and fruit drinks than milk with males being particularly heavy consumers averaging more than three servings of soda and fruit drinks a day.

To help achieve the goals of the DGA 2000 and Healthy People 2010, we have launched efforts to foster healthy school nutrition environments that support proper nutrition and the development of healthful eating habits. This memorandum will serve as a tool to support efforts to improve the school nutrition environment by reemphasizing the requirements prohibiting serving foods of minimal nutritional value (FMNV – see Appendix B to 7 CFR Parts 210 and 220) in the food service area during meal periods. This memorandum replaces earlier memoranda on this subject which were dated December 3, 1990, June 12, 1992, and July 25, 1996.

Why are FMNV prohibited in the School Meals Programs?

Section 10(a) of the Child Nutrition Act of 1966 (42 U.S.C 1799(a)) directs USDA to regulate the service of foods made available in competition with reimbursable meals served under the National School Lunch Program (NSLP) and School Breakfast Program (SBP). Further, Section 9(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)) requires lunches and breakfasts served under the NSLP and SBP to be consistent with the goals of the DGA. The goals in the recently released DGA 2000 include several recommendations on sensible food choices including the choice of a diet that is low in saturated fat and cholesterol and moderate in total fat, the choice of beverages and foods to moderate intake of sugars, and the choice of prepared foods with less salt. In addition, Section 9(f) requires that lunches provide one-third and breakfasts provide one-fourth of the Recommended Dietary Allowances for key nutrients. One means of supporting these statutory nutrition requirements is the limitation placed on the availability of FMNV.

The regulations implementing the statutory requirement on FMNV are found in Section 210.11 of the NSLP regulations and Section 220.12 of the SBP regulations, while the nutrition standards are provided in Section 210.10 of the NSLP regulations and Section 220.8 of the SBP regulations. Under the regulations on FMNV, State agencies and school food authorities (SFA) must establish rules and regulations as are necessary to control the sale of FMNV, including beverages, in competition with reimbursable school meals. At a minimum, these rules and regulations must prohibit the sale of FMNV in the food service areas during the meal periods. Additionally, State agencies and SFAs may impose other restrictions on all foods sold at anytime throughout their schools.

In order to further the nutrition goals set forth by statute and regulations, food service areas must not provide access to FMNV during student meal periods. Introducing access to FMNV violates both the statute and regulations as well as the commitment to nutrition in authorizing legislation.

How do State agencies assess compliance with the rules pertaining to FMNV?

State agencies must aggressively enforce the prohibitions on FMNV. There are three elements that State agencies must assess in order to determine if a SFA is complying with the requirements for FMNV. These are: the food service area/meal period, access to FMNV, and the use of funds in the nonprofit school food service account.

1. Food service area/meal period

The first element to assess is whether the SFA is properly designating the food service area for the purposes of restricting the service of FMNV. As stated in a

memorandum dated December 3, 1990, the term “food service area” refers to any area on school premises where program meals are both served and eaten as well as any areas in which program meals are either served or eaten. “Eating areas” that are completely separate from the “serving lines” are clearly part of the food service area. Furthermore, schools may not design their food service area in such a way as to encourage or facilitate the choice or purchase of FMNV as a ready substitute for, or addition to, program meals.

Similarly, “during meal periods” includes both the time of serving and the time the student spends eating the meal.

2. Access to FMNV

The second element to assess is access to FMNV. This assessment is two-fold. First, it is not permissible for a school to serve FMNV during a meal service period[s] in the area[s] where reimbursable meals are served and/or eaten. For example, if students are permitted to choose a FMNV (e.g., a carbonated beverage) with a reimbursable meal, that FMNV is, in effect, being served in competition with the reimbursable meal. Therefore, this practice is prohibited since it introduces access to FMNV in the food service area during the meal service period.

Secondly, the State agency is required by regulations to assure that the meal is priced as a unit. As part of the agreements between the State agency and SFAs (see Sections 210.9(b)(6) and 220.7(e)(3)), the SFA agrees to price the reimbursable lunch or breakfast as a unit. Any FMNV provided with a reimbursable meal “at no additional charge” is in fact being “sold” as part of the unit if the FMNV is only available when a reimbursable meal is taken. As such, this violates the prohibition against selling FMNV in the food service area during meal periods. Further, such arrangements violate the unit price provision in the agreement.

3. Use of funds in the nonprofit school food service account (SFSA)

The third element the State agency must assess is how the funds in the SFSA are being used. Costs charged to the nonprofit SFSA must be both necessary and reasonable. The costs of FMNV purchased for service in the food service area during meal periods are neither necessary nor reasonable, so they are not allowable costs. In some circumstances, the cost of minor quantities of FMNV used to decorate or enhance a food or menu item is allowable. Any other costs of FMNV for service in the food service area during meal periods must be disallowed.

If SFSA funds are used to purchase FMNV for sale outside a meal period[s] or outside a food service area[s] during meal periods, such purchases must be self-sustaining. This means that funds must be deposited in the SFSA in an amount

sufficient to cover all direct and indirect costs relating to the purchase and service of FMNV with SFSA funds. Records documenting the recovery of these costs must be maintained and available for review.

What should a State agency do if it discovers a violation of the rules pertaining to FMNV?

For violations of the food service area/meal period and access requirements:

Although program regulations do not require fiscal action, USDA strongly encourages State agencies to exercise the authority provided in Sections 210.11 and 220.12 and disallow all meals served by a school on any day that a violation of the regulations is observed and to be diligent in monitoring compliance with corrective action plans.

For violations of use of the SFSA:

When a State agency determines that a SFA has improperly used its SFSA for the purchase and service of FMNV, the State agency must require both corrective action and restoration to the SFSA of any SFSA funds used improperly to purchase and serve FMNV.

Please make certain that State agencies receive this important clarification of the competitive food requirement. Additionally, we are asking that you are proactive in providing technical assistance to State agencies to make any needed changes in current monitoring procedures, and that you monitor State agencies' compliance with established procedures.

/s/

Stanley C. Garnett
Director
Child Nutrition Division