



2 of 2 DOCUMENTS

NEW JERSEY REGISTER
Copyright © 2017 by the New Jersey Office of Administrative Law

VOLUME 49, ISSUE 1

ISSUE DATE: JANUARY 3, 2017

RULE PROPOSALS

**AGRICULTURE
DIVISION OF FOOD AND NUTRITION**

49 N.J.R. 5(a)

Proposed Readoption with Amendments: N.J.A.C. 2:36

Proposed Repeals: N.J.A.C. 2:36-1.13 and 2:36 Appendix

[Click here to view Interested Persons Statement](#)

Child Nutrition Programs

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 18A:33-4 and 5 and 18A:33-9 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-001.

Submit written comments by March 4, 2017, to:

Rose Tricario, Director
Division of Food and Nutrition
New Jersey Department of Agriculture
PO Box 334
Trenton, NJ 08625-0334
proposedrulesFoodNutrition@ag.state.nj.us

The agency proposal follows:

Summary

N.J.A.C. 2:36 was scheduled to expire on November 25, 2016. As the Department of Agriculture (Department) filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date was extended 180 days to May 24, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department has reviewed the rules and determined that they remain necessary, reasonable, and proper for the purposes for which they were originally promulgated. The Department proposes to readopt this chapter with the amendments and repeals set forth below. As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

This chapter describes general program provisions for the Department's Division of Food and Nutrition, which feeds approximately 654,236 school children on a daily basis through the Federal School Breakfast, School Lunch, and After-School Snack programs. These programs provide nutritionally balanced meals to children at low or no cost. The proposed amendments are necessary, reasonable, and proper in order to bring the State rules into alignment with recent additions and revisions to Federal law and current practices and procedures of the Department. Section 208 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) amended Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. § 1779) by requiring the U.S. Secretary of Agriculture to establish science-based nutrition standards for all foods sold on the school campus during the school day including those foods sold outside of school meals, also known as competitive foods. As required by Section 208 of the HHFKA on July 21, 2016, the United States Department of Agriculture, Food and Nutrition Service, issued the National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in Schools as Required by the Healthy, Hunger-Free Kids Act of 2010-Final Rule (Smart Snacks-Final Rule). The Smart Snacks-Final Rule, which had an effective date of July 1, 2014, provides general nutrition standards for competitive foods and any exemptions to those nutrition standards. Its purpose is to improve the health and well-being of the nation's children; to increase the consumption of healthful foods during the school day; and to create an environment that reinforces the development of healthy eating habits.

The proposed rule amendments and repeals leave the existing rules at N.J.A.C. 2:36 generally unchanged, except for changes to the definition section, the sections that address breakfast, the competitive food policy, and the chapter Appendix. Minor technical changes are also proposed. Terms have been revised to mirror Federal terminology, definitions found in the Smart Snacks-Final Rule and the most recent edition of the Dietary Guidelines for Americans (DGA). The DGA, which is based on recommendations made by a committee composed of scientific experts who analyze the most current information on diet and health, is issued in order to promote healthy eating and a healthy body weight for all Americans, including school-aged children. The DGA serves as the fundamental guidance for the nutrition standards found in the Smart Snacks-Final Rule. The proposed amendments will ensure that all foods sold in school, outside of the school meals programs, are nutritiously healthy and help children maintain a healthy body weight.

The current chapter and proposed amendments are summarized as follows:

N.J.A.C. 2:36-1.1 sets forth the definitions of terms used in the rules. The Department is proposing amendments to the definitions in order to mirror the Federal terminology, to bring it into alignment with Department terminology, and for greater clarification.

The definition of "Bureau" is proposed for deletion because it is no longer applicable.

The definition of "candy" is proposed for deletion because it is no longer a specified category of food.

The definition of "Division" is proposed for amendment to reflect the current program titles, Child Nutrition Programs and Food Distribution Program, in the Division of Food and Nutrition.

The definition of "foods of minimal nutritional value" has been deleted to be consistent with its removal by the Smart Snacks-Final Rule.

The definition of "Free and Reduced Price Policy" is proposed for amendment for accuracy.

The definition of "hours of operation" is proposed for deletion because it is no longer applicable.

[page=6] The definition of "local educational agency" is proposed for deletion and replaced with the definition of "School Food Authority."

The definition of "local school wellness policy" is proposed to replace the definition of "New Jersey School Nutrition/Wellness Policy."

The definition of "milk" is proposed to make its definition more explicitly linked to the Federal definition.

The definition of "New Jersey School Nutrition/Wellness Policy" is proposed for deletion and replaced with the definition of "local school wellness policy."

The definition of "New Jersey School Nutrition/Wellness Policy" is proposed for deletion because it is no longer applicable.

The definition of "nonprofit school food service" is proposed for amendment to be consistent with the Federal definition. The proposed amendments make technical changes to the definition to mirror the Federal definition, without making any substantive change to the defined term.

The definition of "point of service" has been revised for accuracy.

The definitions of "school campus" and "school day" is proposed in order to make the proposed amendments consistent with the Smart Snacks-Final Rule's definitions.

The definition of "School Nutrition Programs" is proposed for amendment to replace the term "Bureau of Child Nutrition" with the "Division of Food and Nutrition" for accuracy.

The definition of "sugar" is proposed for deletion because it is no longer applicable.

N.J.A.C. 2:36-1.2 explains the Free and Reduced Price Policy and Agreement for School Nutrition Programs requirements for all schools participating in one of the Federal Child Nutrition Programs.

N.J.A.C. 2:36-1.3 explains the Federal Eligibility Guidelines requirements for all sponsors participating in one of the Child Nutrition Programs and by all nonparticipating schools for the purposes of the survey requirements as defined in N.J.A.C. 2:36-1.4.

N.J.A.C. 2:36-1.4 explains the procedure required of every school in completing the free and reduced price meals and/or free milk survey and the purpose of the survey requirement. N.J.A.C. 2:36-1.4(a) is proposed for amendment to update the statutory citations for State breakfast and lunch thresholds. N.J.A.C. 2:36-1.4(b) is proposed for amendment to change the name of the application from "Application for Free and Reduced Price Meals or Free Milk" to "Application for Free and Reduced Price School Meals" in order to align with Department procedure.

N.J.A.C. 2:36-1.5 explains the free and reduced price meal and/or free milk application procedures. N.J.A.C. 2:36-1.5(c) is proposed for amendment to remove "Bureau of Child Nutrition" because it is no longer applicable and to remove a specific address for the USDA Food and Nutrition Service website used to retrieve applications in foreign languages. N.J.A.C. 2:36-1.5(d) is proposed for amendment to remove the sentence "Applications from the proceeding year may be used to determine eligibility only for the month of September" and replace it with "Students are eligible for school meal benefits or free milk for the school year and up to 30 operating days in the subsequent school year" in order to accurately reflect student eligibility at the beginning of a school year.

49 N.J.R. 5(a)

N.J.A.C. 2:36-1.6 concerns the participation requirements for the school lunch and breakfast programs. N.J.A.C. 2:36-1.6(b)1ii is proposed for amendment to change the participation level at which a school must submit to the State a revision of its school breakfast plan from 50 percent to 25 percent in order to make the State of New Jersey participation level requirements more consistent with the Federal Healthier U.S. School Challenge participation level requirements necessary to receive recognition for participating in the School Breakfast Program.

N.J.A.C. 2:36-1.7 explains the basis for the local nutrition policy for both school meals and competitive foods as the Dietary Guidelines for Americans and the Federal regulations governing the School Nutrition Programs and requires each school district and/or sponsor to implement a local school wellness policy. N.J.A.C. 2:36-1.7(a) is proposed for amendment to remove references to dining environment, adequate time for student meal service and consumption, and coordination of lunch and recess or physical education schedules from the policy. N.J.A.C. 2:36-1.7(a)1 and 2 are proposed for deletion to reflect Department policy. The Dietary Guidelines can be located and obtained on-line. N.J.A.C. 2:36-1.7(b) is proposed for amendment to change the name of the policy from New Jersey School Nutrition/Wellness Policy to the Local School Wellness Policy. The heading of this section is also proposed for amendment to Local School Wellness Policy.

N.J.A.C. 2:36-1.8 provides for consistency in the nutrition standards between the Department and Federal nutrition standards for all school meals and clarifies the requirement for compliance with the State Competitive Food Policy. N.J.A.C. 2:36-1.8(a) is proposed for amendment to remove reference to the Department's Nutrition Standards for School Nutrition Programs publication, which is no longer applicable. N.J.A.C. 2:36-1.8(b) is proposed for amendment to incorporate the new Federal nutrition standards for competitive foods established by the Smart Snacks-Final Rule.

N.J.A.C. 2:36-1.9 provides for the review and evaluation of each sponsor's implementation of the Free and Reduced Price Policy and the New Jersey School Nutrition/Wellness Policy; the withholding of funds and/or other fiscal actions for noncompliance; and the written approval by the Division before the standards set forth in either policy can be altered or amended. N.J.A.C. 2:36-1.9(a), (b), and (c) are proposed for amendment to change the name of the policy from New Jersey School Nutrition/Wellness Policy to the Local School Wellness Policy.

N.J.A.C. 2:36-1.10 explains the basis for the maximum meal and milk charges pursuant to Federal regulations.

N.J.A.C. 2:36-1.11 explains the local nutrition standards for competitive foods. Subsection (a) prohibits certain items from being sold as a competitive food. N.J.A.C. 2:36-1.11(a) is proposed for deletion and replacement for accuracy and to include the terms "school campus" and "school day" in order to make the time and place restrictions consistent with the Smart Snacks-Final Rule. The name of the policy has been changed from New Jersey School Nutrition/Wellness Policy to the Local School Wellness Policy and the term "foods of minimal nutritional value" has been deleted in order to be consistent with its removal in the Smart Snacks-Final Rule. N.J.A.C. 2:36-1.11(b) pertaining to the reduction of items containing trans fats has been removed in order to be consistent with the Smart Snacks-Final Rule. Recodified N.J.A.C. 2:36-1.11(c) is proposed for amendment to incorporate by reference the new Federal nutrition standards for competitive foods and to delete the specifics in the subsection. Recodified N.J.A.C. 2:36-1.11(e) is proposed for deletion and replacement in order to be consistent with the Smart Snacks-Final Rule. Recodified N.J.A.C. 2:36-1.11(e)2 is proposed for amendment in order to be consistent with the Smart Snacks-Final Rule's elimination of the category of foods of minimal nutritional value. Recodified N.J.A.C. 2:36-1.11(f) is proposed for amendment for accuracy and to remove non-participating school districts.

N.J.A.C. 2:36-1.12 provides for free, reduced price, and paid meal accountability.

N.J.A.C. 2:36-1.13 provides standards for biosecurity in food service. This section is proposed for repeal because the requirement for schools to have a biosecurity checklist for school food service programs is no longer mandated by the USDA and its accompanying Federal regulations for school nutrition programs. Additionally, oversight of school safety policies is performed by the New Jersey Department of Education.

N.J.A.C. 2:36 Appendix provides the nutrition and physical exercise principles underlying the New Jersey School Nutrition/Wellness Policy. The chapter Appendix is proposed for repeal because a New Jersey School Nutrition/Wellness Policy no longer exists. Each school and/or sponsor must prepare its own Local School Wellness Policy consistent with the Dietary Guidelines for Americans, the USDA nutrition standards for the school meal programs and competitive foods, and the wellness policies required by Section 204 of the Healthy, Hunger-Free Kids Act of 2010 to Section 9A of the Richard B. Russell National School Lunch Act at 42 U.S.C. § 1758(b).

Social Impact

The rules proposed for readoption with amendments and repeals will continue to provide a basis for school districts to improve the nutritional [page=7] value of all foods offered both inside and outside the food service area, including competitive foods sold on the school campus during the school day. The rules will continue the added benefits of improving the health of school-aged children by creating an environment that reinforces the development of healthy eating habits. The proposed amendments will continue to be the basis for promoting wellness and for engaging in physical activities that encourage children to learn how to maintain a healthy body weight.

Economic Impact

The economic impact that the rules proposed for readoption with amendments and repeals will have is described in Part IV of the Smart Snacks-Interim Final Rule's Cost-Benefits Analysis (issued on June 28, 2013), and the discussion therein is incorporated herein by reference. Since actual competitive food prices are not tracked nor required to be tracked, the economic impact is speculative at best. The cost-benefits analysis has several case studies that suggest that the additional costs that may be incurred by schools in offering healthier food and beverage products may be offset by the increase in revenue in the purchases of newly available healthier food and beverage products. The Smart Snacks-Interim Final Rule expects that the costs to schools will have a limited effect on net revenue. Additionally, the increased long-term health benefits to the school aged population in reducing the consumption of calorie dense foods (in decreased health costs and improved health) will outweigh any minimal costs that may result.

Readoption of these rules will not increase State and local expenditures for the provision of the school lunch and school breakfast programs. The Department of Agriculture provides school districts with State and Federal cash assistance and donated foods acquired by the United States Department of Agriculture to be used to assist schools in serving nutritious breakfasts and lunches to children each school day and to offset the costs associated with providing these meals. (7 CFR Parts 210 and 220).

The costs to the State for these programs is only the State match required for participation in the Federal school lunch program. In 2016, the State amount for lunch was approximately \$ 5,544,914 in program funds generating approximately \$ 257 million in Federal program funds and approximately \$ 94 million in Federal school breakfast subsidies. An additional \$ 127,441 in State administrative match dollars is required for administration of the programs at the State level. The remainder of the program funding is Federal, indicating the magnitude of the Federal subsidy from which the State benefits as a result of participation in the Federal programs. The economic impact to New Jersey school children and their families is positive; as nutritious breakfasts and lunches are required to be available at regulated prices to all students in schools where specified levels of students qualify for free or reduced price breakfasts and lunches and offered free and at reduced prices to those students eligible.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) require administrative agencies which adopt, readopt, or amend any State rules that exceed any Federal standards or requirements to include in the rulemaking a comparison between the two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard. The proposed State rule amendments are necessitated by Section 208 of the Healthy, Hunger-Free Kids Act of 2010 and the corresponding Smart Snacks- Final Rule issued by the United States

Department of Agriculture on July 21, 2016, and do not exceed the Federal standards. The proposed readoption of this chapter is in accordance with the Federal school nutrition regulations and is primarily funded by Federal United States Department of Agriculture Child Nutrition funds as per 7 CFR Parts 210, 220, and 215.

Under the Federal rules, school participation in Federal school nutrition programs is optional. The rules proposed for readoption exceed the Federal rules in that they require all schools with five percent or more of enrollment eligible for free or reduced priced meals to provide a school lunch program and/or any school with 20 percent or more of enrollment eligible for these same benefits to offer the school breakfast program and to offer free and reduced-price meals to all eligible students. This requirement implements State statute (N.J.S.A. 18A:33-4, 5 and 10); however, and could not be limited without statutory change. The rules proposed for readoption also require the State to establish a maximum per meal and milk charge, which are not explicitly required by Federal regulations. The Federal regulations do set a maximum charge for reduced-price meals and suggest that pricing otherwise take into consideration the Federal subsidy; the rules proposed for readoption put that suggestion into operation by setting a maximum charge that includes the Federal subsidy as one of the parameters.

Jobs Impact

It is not anticipated that the rules proposed for readoption with amendments and repeals will result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments and repeals will have a positive impact on New Jersey agriculture by increasing the number of meal opportunities for schools to use locally grown fruits and vegetables.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments and repeals will impose no additional requirements beyond those required by Federal regulations or the Smart Snacks-Final Rule. In addition, there will be no costs incurred for employment of professional services or any capital expenditures. The rules proposed for readoption with amendments and repeals do not affect small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements of these rules impact solely upon sponsors participating in the Child Nutrition Programs.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and repeals will have no impact on the affordability of housing in New Jersey. The scope of the chapter is the nutrition standards for the Federal Child Nutrition Programs administered by the Department of Agriculture, Division of Food and Nutrition and programs that relate to meals, beverages, and snacks and not housing development.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and repeals will have an insignificant impact on smart growth development, and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The scope of the rule is the nutrition standards for the Federal Child Nutrition Programs administered by the Department of Agriculture, Division of Food and Nutrition and programs that relate to meals, beverages, and snacks and not housing development.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:36.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 2:36-1.13 and 2:36 Appendix.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

2:36-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...

["Bureau" means the Bureau of Child Nutrition Programs, which administers the Federal child nutrition program in the State of New Jersey.

"Candy" is defined as any food item, that as served in its finished form, contains, by weight, 40 percent or more sugar (in crystalline form or in solution as syrup, both monosaccharides and disaccharides) and/or other sweetening agents, or any food product commonly referred to as "candy."]

...

[page=8]"Division" means the Division of Food and Nutrition, which is the division within the State Department of Agriculture that contains the [Bureau of] Child Nutrition **Programs** and the [Bureau of] Food Distribution **Program**.

...

["Foods of minimal nutritional value" means those foods contained in the following categories as specified in the United States Department of Agriculture, regulations 7 CFR Part 210 Appendix B: soda water, water ices, chewing gum, certain candies: hard candy, jellies and gums, marshmallow candies, fondant, licorice, spun candy and candy coated popcorn.]

"Free and Reduced Price[d] Policy" means the free and reduced-price policy required by applicable regulations of the USDA, 7 CFR Parts 210, 215, 220, and 245.

["Hours of operation" means from the beginning of the first scheduled meal period until the end of the last scheduled meal period.

"Local educational agency" means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools, which has legal authority to operate the National School Lunch, School Breakfast, After School Snack, Fresh Fruit and Vegetable or Special Milk Program.]

"Local school wellness policy" means the nutrition and wellness policy developed by the school food authority in accordance with Federal and State rules and regulations.

...

["New Jersey School Nutrition/Wellness Policy" means the nutrition policy containing standards developed by the State Department of Agriculture, incorporated herein by reference as the chapter Appendix.]

"Milk" means a variety of fluid milk consistent with the most recent Dietary Guidelines for Americans and the milk provisions of the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966, as amended, and associated Federal regulations.

"Nonprofit school food service" means [that] all food service operations conducted by the school food authority [must be conducted] principally for the benefit of school children, all of the revenue from which is [to be] used solely for the operation or improvement of such food services.

...

"Point of service" means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced-price[d] or paid meal and/or free or paid milk has been served to an eligible child.

...

"School campus" means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

"School day" means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day.

"School food authority" means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools, which has legal authority to operate the National School Lunch, School Breakfast, After School Snack, At-Risk Afterschool Meals, Fresh Fruit and Vegetable, or Special Milk Program.

"School Nutrition Programs" means those programs administered by the [Bureau of Child] **Division of Food and Nutrition**, which include the National School Lunch Program, School Breakfast Program, After School Snack Program, Fresh Fruit and Vegetable Program, and Special Milk Programs.

...

["Sugar" means any class of water-soluble crystalline carbohydrates having a sweet taste. Sugar also comes in syrup form. Other words for sugar include, but are not limited to, fructose, sucrose, lactose, maltose, glucose, galactose, honey, dextrin, malt, molasses, maple syrup and corn syrup.]

...

2:36-1.4 Survey

(a) By the last school day prior to October 16 of each school year, each school, under the supervision of its sponsor,

shall survey the parent or guardian of each student enrolled to determine which students are eligible to receive free or reduced-price meals and/or free milk. The purpose of the survey is to determine whether the school meets or exceeds the five percent threshold established by N.J.S.A. [18A:33-4] **18A:33-5** for school lunch programs and the 20 percent threshold established for school breakfast programs in N.J.S.A. [18:33-9] **18A:33-10**.

(b) This survey shall be conducted using the "Application for Free and Reduced Price **School Meals** [or Free Milk]" as prescribed by the Secretary pursuant to Federal regulations (7 CFR Part 245). This application shall be distributed to the parent or guardian of every student enrolled in the school.

(c) (No change.)

2:36-1.5 Free and reduced price meal and/or free milk application

(a)-(b) (No change.)

(c) Applications in languages other than English must be provided by the school food authority where non-English speaking parents are possible applicants. (An application in Spanish is available upon request from the Division of Food and Nutrition[, Bureau of Child Nutrition].) Other language translations are available on the USDA Food and Nutrition Service website [at: <http://www.fns.usda.gov/cnd/FRP/frp.process.htm>].

(d) Upon receipt of the completed application, the district must determine each student's eligibility for a free or reduced-price meal and/or free milk from the information submitted. Each student shall be offered free or reduced-price meals and/or free milk as soon as eligibility has been determined. [Applications from the proceeding year may be used to determine eligibility only for the month of September.] **Students are eligible for school meal benefits or free milk for the school year and up to 30 operating days in the subsequent school year.** If the school has reason to question the information provided, the student affected must continue to receive the free or reduced-price meals and/or free milk until completion of the appeal procedures set forth in the sponsor's policy pursuant to Federal regulations (7 CFR § 245.7 Hearing Procedure for Families and School Food Authorities).

(e) (No change.)

2:36-1.6 Participation requirements

(a) (No change.)

(b) Any school in which 20 percent or more of the school enrollment is found to be eligible for free or reduced price meals as of October 1 of the preceding school year, shall offer the School Breakfast Program to all students enrolled in that school, with free and reduced price breakfasts offered to all qualifying children. Such breakfasts shall meet minimum nutritional standards established by the U.S. Department of Agriculture 7 CFR [§] 220.8. Any school may participate in the School Breakfast Program without participating in any other Federal programs.

1. Any school meeting the 20 percent threshold that requires the implementation of the School Breakfast Program must comply with the following requirements:

i. (No change.)

ii. Any schools that have a participation rate of less than [50] **25** percent of eligible students in a school breakfast program during any year of the program shall submit a revision of their school breakfast plan to include changes designed to increase student breakfast participation.

[page=9] (c)-(d) (No change.)

2:36-1.7 [New Jersey] **Local School [Nutrition/Wellness] Wellness Policy**

(a) The Department hereby adopts and incorporates by reference the Dietary Guidelines for Americans and the USDA nutrition standards for National School Lunch, School Breakfast, and/or After School Snack programs as required by 7 CFR Parts 210, 215, 220, and 245 as the basis for local **school wellness** policies. Such policies shall regulate the types of food items [offered] **sold in schools during the school day**, outside of the Federal meal [requirements] **programs**, such as a la carte sales, vending machines, school stores, and fundraisers. [The policy shall also address the dining environment, adequate time for student meal service and consumption and coordination of lunch and recess or physical education schedules.]

1. A copy of the Dietary Guidelines for Americans may be obtained [at <http://www.usda.gov/cnpp/DietGd.pdf>. A copy of the Guidelines are also on file in the Director's Office, Division of Food and Nutrition, NJ Department of Agriculture, PO Box 334, Trenton, NJ 08625] **online**.

2. A copy of 7 CFR Parts 210, 215, 220, and 245 [is on file in the Director's Office, Division of Food and Nutrition, NJ Department of Agriculture, PO Box 334, Trenton, NJ 08625] **may be obtained online**.

(b) Each school [district/sponsor] **district and/or sponsor** shall implement a [policy consistent with New Jersey] **Local School [Nutrition/Wellness] Wellness Policy**[, which is set forth in the chapter Appendix. The New Jersey School Nutrition/Wellness Policy is a minimum standard and does not preclude the adoption of a more stringent policy by the school district/sponsor].

2:36-1.8 Nutrition standards

(a) Nutrition standards established by the Department for meals served under the National School Lunch, School Breakfast, and After School Snack Programs or as mandated by N.J.S.A. 18A:33-4 shall be identical to those established in the USDA regulations at 7 CFR [§] 210.10 and [Part] 220.8[, respectively]. These Federal regulations [and all subsequent amendments] are adopted herein by reference. [These standards are published in the Department's Nutrition Standards for School Nutrition Programs available through the New Jersey Department of Agriculture, Division of Food and Nutrition, PO Box 334, Trenton, New Jersey 08625-0334.]

(b) Nutrition standards for all [other food and beverage items] **competitive foods** shall comply with **7 CFR 210.11 and 220.12** and the Competitive Food Policy, as referenced in N.J.A.C. 2:36-1.11.

2:36-1.9 Review and evaluation

(a) Each sponsor's implementation of the Free and Reduced Price Policy and [the New Jersey] **a Local School [Nutrition/Wellness] Wellness Policy** shall be reviewed and evaluated by the Division on a continuing basis.

(b) Federal and State [child nutrition program] **Child Nutrition Program** funds may be withheld and/or fiscal action **may be** taken against sponsors (see 7 CFR 210.19(c), 215.12(a), 220.14(a), and 245.10) found not to be in compliance with applicable Federal regulations (7 CFR Parts 210, 215, 220, and 245) and the [New Jersey] **Model Local School [Nutrition/Wellness] Wellness Policy**.

(c) Sponsors shall not alter or amend standards set forth in the Free and Reduced Price Policy [or the New Jersey School Nutrition/Wellness Policy] without prior written approval [by] **from** the Division.

2:36-1.11 Competitive food policy

[(a) The competitive food policy prohibits certain snack and beverage items by regulations promulgated by the USDA for the administration of child nutrition programs and as contained in the New Jersey School Nutrition/Wellness Policy. The following items shall not be served, sold or given away as a free promotion anywhere on school property at any time before the end of the school day, including items served in the reimbursable After School Snack Program:

1. Foods of minimal nutritional value as defined by USDA regulations;
2. All food and beverage items listing sugar, in any form, as the first ingredient (beginning September 1, 2007); and
3. All forms of candy (beginning September 1, 2007).

(b) Schools shall reduce the purchase of any products containing trans fats (beginning September 1, 2007) (Federal labeling of trans fats on all food products is required by January 1, 2006.)]

(a) All competitive food sold to students on the school campus during the school day must meet the nutrition standards specified in 7 CFR 210.11 and 220.12.

[(c)] **(b)** (No change in text.)

[(d)] **(c)** [As of September 2007, all] **All** snack and beverage items, sold [or served] anywhere on **the** school [property] **campus** during the school day, including items sold in [a] **a** la carte lines, vending machines, snack bars, school stores, and fundraisers or served in the reimbursable After School Snack Program, shall meet the [following] standards[:]
delineated in this competitive food policy and the standards established by USDA for competitive foods, found at 7 CFR 210.11 and 220.12, incorporated herein by reference. The USDA standards provide general nutrition standards for competitive foods, the exemptions to these standards, and specific standards for grains, fat, sugar, calorie, sodium, and accompaniments. All schools must comply with these Federal regulatory standards.

[1. Based on manufacturers' nutritional data or nutrient facts labels:

- i. No more than eight grams of total fat per serving, with the exception of nuts and seeds;
 - ii. No more than two grams of saturated fat per serving.
2. All beverages, other than milk containing two percent or less fat, or water, shall not exceed a 12-ounce portion size; whole milk may not exceed an eight-ounce portion;
 3. In elementary schools, beverages shall be limited to milk, water or 100 percent fruit or vegetable juices;
 4. In middle and high schools, at least 60 percent of all beverages offered, other than milk or water, must be 100 percent fruit or vegetable juice; and
 5. In middle and high schools, no more than 40 percent of all ice cream/frozen desserts shall be allowed to exceed the above standards for sugar, fat and saturated fat.]

[(e) Food and/or beverages served during special school celebrations or during curriculum related activities shall be exempt from this policy with the exception of foods of minimal nutritional value as defined by USDA regulations 7 CFR Part 210.10.]

(d) There shall be no exemptions for food and/or beverages sold as a part of a fundraising activity.

[(f)] (e) Medical exemption: This policy does not apply to:

1. (No change.)

2. School nurses, [using foods of minimal nutritional value (FMNVs)] during the course of providing health care to individual students; or

3. Special needs students whose Individualized Education Plan (IEP) indicates [their use] **the use of a special diet** for behavior modification.

[(g)] (f) The requirements of (a) through [(f)] (e) above [not only] apply to all participating sponsors, both public and non-public[, but also to all school districts required to make school lunch available pursuant to N.J.S.A. 18A:33-4 regardless of participation in the National School Lunch Program].