

**Nutrition Standards for Foods and Beverages
Questions and Answers
Regarding Senate Bill 210 (SB 210)**

(Sections 3313.814, 3313.816 and 3313.817)

8/25/2011

Legislative Note: Ohio House Bill 153, signed into law on June 30, 2011, revised Ohio Revised Code (ORC) section 3313.816 related to the ala carte sale of milk. The size and calorie restrictions for the ala carte sale of milk were removed. The size, type and flavor of milk sold ala carte in a school are up to the discretion of the school.

***Note – Questions revised since the publication of the previous version of this document are denoted by a double star (**)*

***Overview of the Nutrition Standards for Foods and Beverages Requirement
(Section 3313.814)***

Question: Is a formal board policy required? Can the policy simply say the “Alliance” or nutrient density format?

Answer: The local board or governing authority must adopt a formal policy. The policy must specify the types of food and beverages that may be sold on school premises and specify the time and place that each type of food or beverage may be sold. The policy cannot simply state “Alliance” or other food standards.

Question: Will the Ohio Department of Education (ODE) provide a sample board policy?

Answer: ODE does not plan to develop a sample board policy at this time.

Question: Are schools run by local boards of developmental disabilities (DD) and/or Residential Child Care Institutions (RCCIs) required to comply with SB 210?

Answer: Section 3313.814 specifies that each school district board of education and each chartered nonpublic school governing authority must comply with this section. Since this section does not address DD schools and RCCIs, they are not required by law to meet the specifications of this section.

Question: If a private school charges tuition to households for students to attend the school and the tuition includes meals for students, is the private school exempt from following the food and beverage standards?

Answer: If meals are included in tuition, any food provided at no charge to students is exempt because the school is not physically collecting money from the individual student for the food. If the private school charges students for an individual item and the students hand over money (in the case of buying food or beverages ala carte, in school stores, or in vending machines), then the private school would follow the standards for those items.

Question: If a school does not participate in the National School Lunch Program (NSLP) and supplies food from a local eatery each day as an option for lunch, is this considered “a la carte” (and thus subject to the a la carte guidelines in the bill)?

Answer: The law defines “a la carte” as an individually priced food or beverage item that is available for sale to students "A la carte item" does not include any food or beverage item that is part of a reimbursable meal and that is available for sale as an individually priced item in a serving portion of the same size as in the reimbursable meal, regardless of whether the food or beverage item is included in the reimbursable meal served on a particular school day. If a school does not participate in the NSLP, it would not have the opportunity to serve foods that are exempt under the definition of a reimbursable meal, so each individual item served would be considered ala carte and subject to the nutrition standards for foods and beverages, as specified in SB 210.

Question: In section 3313.814, the a la carte definition for fundraising does not state that interscholastic athletic events are outside the regular school day. If an interscholastic athletic event is held during the school day, does that mean that the school can sell anything it wants because it is a fundraiser? This does occur, especially during tournament time.

Answer: The statement regarding interscholastic athletic events does not carry the caveat that the event must be conducted outside of school hours. Thus, interscholastic athletic events held during the school day are exempt.

Question: What is the definition of “interscholastic athletic event?”

Answer: The language in SB 210 does not specifically define an interscholastic athletic event. The Ohio High School Athletic Association defines an interscholastic athletic contest as the following: “Interscholastic athletic contest, as used throughout the Bylaws and Sports Regulations of the OHSAA is defined as a sports event in which student-athletes from at least one school are engaged in sports-related activities with students from at least one or more schools or non-interscholastic programs. This includes, but is not limited to, scheduled contests, practices between two or more schools, sports day, electronic contests, invitational contests, alumni games and interschool scrimmages.

Question: What is the definition of “fundraiser?”

Answer: Again, the language in SB 210 does not specifically define a fundraiser. A dictionary definition of a school fund raiser is an event held to collect money for a school.

Question: If a school-sponsored group conducts a bake sale during the school day and asks students for donations for the items. as opposed to setting a price for the items, are the items in the bake sale exempt?

Answer: In this scenario, the question is whether the school-sponsored group conducting the bake sale lets the students just take items even if the student chooses not to donate. If the answer is yes, the event could be exempt. If no, then it really isn't a donation. Those items actually are being sold to the student, so the school-sponsored group must follow the food and beverage standards.

Question: What is the required depth of the consultation with a dietitian or school nutrition specialist? Is this consultation related only to SB 210, or does it involve a consultation on the school food service program as a whole, which would entail the review of NSLP menus, etc.?

Answer: The consultation required in the SB 210 language relates to the adoption and enforcement of nutrition standards governing the types of food and beverages that may be sold on school premises. It also specifies when and where each type of food or beverage may be sold. It is specific to this section in SB 210 and does not encompass other aspects of the school food service (thus it is not required for a district to consult with the authorities mentioned in 3313.814 for the menu developed for the National School Lunch Program, School Breakfast Program or other school food service program operations).

Question: Can a group setting count as a consultation?

Answer: A group consultation is an option, as long as the person providing the consultation has the qualifications as listed in 3313.814 and participants have the opportunity to ask questions and receive feedback.

Question: How often is the consultation required – i.e., annually or just once?

Answer: The consultation is required only upon the initial adoption of standards. A district may review the standards for amendment at any time.

Question: Can ODE employees provide consultation if they have the appropriate credentials as specified in the bill (i.e., can ODE's Office for Child Nutrition offer a group instruction session, either in person or through electronic media, such as a webinar, to present the information)?

Answer: Yes, as long as the ODE employee providing the consultation is a licensed dietitian, a dietetic technician registered by the Commission on Dietetic Registration or a School Nutrition Specialist, as recognized by the School Nutrition Association.

Question: I have SNA Level 2 crediting. Does this mean I am credentialed by the School Nutrition Association, per SB 210 guidelines?

Answer: No. The School Nutrition Association (SNA) offers two kinds of training. The first is certification, which assures that members adhere to nationally accepted standards for quality programs. The second is credentialing, which provides ongoing professional development and can lead to certification as a school nutrition specialist. Only those individuals who are certified school nutrition specialists by the SNA meet the requirements outlined in Section 3313.816.

Nutrition Standards for Beverages (Section 3313.816)

Question: What beverage standards is a school required to follow if it is a K-12 school with no predominant grade groupings?

Answer: If a school building has separate areas for the grade groupings and the students do not intermingle with the other grade groups (i.e. K-4 in one “pod” or wing of the building, 5-8 in another “pod” or wing etc.), then the different sections of the building can follow the standards appropriate for the grade grouping serviced in that section of the building. If separation of grade groups is not possible, the school can follow the criteria for the “predominant grade grouping” in the school. For example, if a building is K-8 and 300 students are in the K-4 grade grouping and 500 students are in the 5-8 grade grouping, the school can follow the beverage criteria for grades 5-8. If separation of grade groups is not possible and each grade grouping has approximately the same number of students, then the school must follow the most restrictive criteria.

****Question: Please clarify the language regarding the use of the Alliance for a Healthier Generation standards. Does the language refer specifically to the competitive foods for sale in a school, or does it also include beverage standards?**

Answer: Section 3313.817 (D) is specific to food. The section on beverages (3313.816) has specific standards that schools must follow. Schools that have previously adopted beverage standards (such as beverage standards through the Alliance for a Healthier Generation) can continue to follow the previously adopted beverage standards as long as the previously adopted beverage standards meet or are more restrictive than the new Ohio requirements under section 3313.816.

Question: The beverage standards indicate that 50 percent of food or beverages in vending machines must be water or low-calorie items. Since 8 ounces of milk and 4 ounces of juice can both be components of meals, are milk and juice exempt from the calculations?

Answer: Milk is not included in the 50% calculation if the school is on the National School Lunch Program (NSLP). Per NSLP federal regulations 7 CFR 210.10, a school participating in the NSLP, or a person approved by a school participating in the NSLP, must not directly or indirectly restrict the sale or marketing of fluid milk at any time or in any place on school premises or at any school-sponsored event.

Juice is included in the 50 percent calculation, unless the vending machine is selling only reimbursable meals, as specified in Section 3313.816 (B) (2).

Question: The language in SB 210 states that water, juice and milk can be sold in specified serving sizes in all three grade groups. If 50 percent of offerings in any given location must be water or low calorie beverage, elementary and middle schools would never be able to sell water, milk and juice together in one location (since juice and milk would make up 66.6 percent of that location's offerings, water being the other 33.4 percent). Is this interpretation correct?

Answer: If a school is on NSLP, milk is not included in the 50% rule as this would indirectly restrict the sale of milk, a practice prohibited by NSLP federal regulations. In order to sell juice, the school would need to offer a proportionate amount of water and juice for sale in any given location (vending machine, school store or ala carte line).

Question: In considering the 50 percent rule for beverages being sold in one location, are we counting number of individual products (water vs. juice), individual items (water, apple juice, orange juice, etc.) or number of units (50 bottles of water vs. 50 bottles of juice etc.)?

Answer: The school would consider number of **units** in the above example when completing the 50 percent calculation as published in SB 210.

Question: A district recently built a coffee bar for students at one of its schools. The school is not on the school lunch program. Is the coffee bar subject to the beverage restrictions in SB 210?

Answer: Section 3313.816 pertains to all public and chartered nonpublic schools, regardless of whether the school participates in the NSLP. In this example, if the school is a public or a chartered nonpublic school, the school must follow the beverage standards as specified in this section.

Question: Section 3313.816 (A)(3)(e) states that a school with a majority of the students in grades 9 through 12 can sell any size beverage that contains no more than 10 calories per 8 ounces, which may include caffeinated beverages and beverages with added sweeteners, carbonation or artificial flavoring. Isn't the sale of carbonated beverages prohibited during the school day if a school is participating in the National School Lunch Program?

Answer: The National School Lunch Program Regulations prohibit the sale of foods of minimal nutritional value (FMNV) in the food service areas during the operation of any of the USDA Child Nutrition Programs. While carbonated beverages are defined as a FMNV by the federal regulations, the USDA does allow exemptions. A list of these exempted foods rule are published yearly and available on the website at www.education.ohio.gov under the School Meal Programs section in the *Guidance, Policy Memoranda and FNS Instructions*. Since NSLP regulations say that state law cannot be less restrictive than federal law for FMNV, all schools operating a NSLP must ensure that any carbonated beverages that are not exempt from the FMNV regulations are

not served in the meal program serving and dining area(s) during meal program serving and eating times.

Question: Since water is an appropriate beverage to sell at all grade levels, does flavored water also an acceptable item for sale?

Answer: Since the language in SB 210 simply states “water” as an acceptable item, any product that can legally be labeled as “water” is an acceptable item for sale. Any product labeled as a “water beverage,” however, does not meet the legal definition of “water.”

Nutrition Standards for Food (Section 3313.817)

Question: Do food items sold for reimbursable meals need to be the same serving size as those sold a la carte? Example - Many schools sell a la carte items that could count as a component of a reimbursable meal. Since these items are not part of the menu, the serving size is not defined by what is served on the meal. This includes items such as sandwich bars, salad bars, large pizza, etc. Does this mean that the school can serve these items in whatever size it wants?

Answer: The language in this section states that an "a la carte item" does not include any food or beverage item that is part of a reimbursable meal and that is available for sale as an individually priced item in a serving portion of the *same size* as in the reimbursable meal, regardless of whether the food or beverage item is included in the reimbursable meal served on a particular school day.

In order for the items to be sold a la carte (and be exempt from the standards of this section), the foods must be incorporated into a reimbursable meal in the serving size in question and be considered a component contributing to a reimbursable meal. For example, adding regular potato chips to a reimbursable meal will not exempt this food from the a la carte standards of this section because regular potato chips are not a credible component in the USDA School Meal Programs. If a student can choose foods from the salad, sandwich and/or pizza bar and these foods contribute to a reimbursable meal, these foods are exempt from this section.

Question: If a food is considered a component in the After School Care Snack Program through the U.S. Department of Agriculture, would it be exempt from the food standards in SB 210?

Answer: SB 210 specifically states that foods that can be a component of the School Breakfast Program and the National School Lunch Program are exempt from the food standards. The language does not specify the After School Care Snack Program. If a food can be a component of the After School Care Snack Program, but cannot be a component of either the School Breakfast or School Lunch Program, that food item would not be exempt from the food standards in SB 210.

Question: Do these standards apply only to foods sold at school? For example, if a school has a carnival and gives out free cotton candy or other foods, are these items exempt because the students are not being charged?

Answer: That is correct. The standards developed by schools for both food and beverages are related to items *sold* on the premises of the schools. It does not address food and beverages that are provided free of charge to students.

Question: How should a school address items such as ketchup, mustard, mayonnaise and other condiment items?

Answer: The intent of the law is to address foods that are sold to students, more specifically foods that can be consumed independently. Condiment items that are not intended to be consumed by themselves are not addressed by SB 210. Schools should consult the Dietary Guidelines for Americans, as advised in SB 210 when making a decision on the availability of condiment-type items to students.

Question: When will the free software be made available to schools to use to comply with the nutrition standards for foods?

Answer: As specified in Ohio Revised Code 3313.817, when ODE is able to obtain free of charge computer software for assessing the nutritional value of foods that conforms with the requirements of this section in revised code, ODE shall make that software available free of charge to each public and chartered nonpublic school.