

March 6, 2003  
San Francisco  
Parents Advocating School Accountability  
www.pasasf.org

## **School Districts Defy Soda-Sales Ban**

The commonplace nationwide practice of selling cola and other sodas in school cafeterias at lunchtime violates U.S. Department of Agriculture regulations, according to a Jan. 16, 2001, USDA memo uncovered by Parents Advocating School Accountability (PASA).

The memo cites USDA regulations, apparently widely ignored, in emphasizing “requirements prohibiting serving foods of minimal nutritional value ... in the food service area during meal periods.”

The USDA’s list of foods of minimal nutritional value, or FMNV, begins with carbonated soda water, including artificially sweetened sodas and sodas with nutrients added. (The list also includes chewing gum and a quirky, limited selection of candies.)

The memo’s wording is clear: “[F]ood service areas must not provide access to FMNV during student meal periods,” it declares. “ ‘[F]ood service area’ refers to any area on school premises where program meals [federally reimbursable school breakfasts and lunches] 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. ... [S]chools may not design their food service area in such a way as to encourage or facilitate the choice or purchase of FMNV.”

The memo adds: “State agencies and SFAs [school food authorities] may impose other restrictions on all foods sold at anytime throughout their schools.”

It is not clear how schools and districts justify the widespread nationwide violations of the FMNV regulation, though some authorities reportedly view the language as subject to interpretation.

The regulations and nutrition standards referred to in the memo are part of Sections 210.10 and 210.11 of the National School Lunch Program regulations and Sections 220.8 and 220.12 of the School Breakfast Program regulations.

The memo to Regional Directors, Special Nutrition Programs, All Regions, is signed by Stanley C. Garnett, Director, Child Nutrition Division.

PASA, www.pasasf.org, is a San Francisco-based, volunteer-run research and information project.

##

Link to USDA memo (PDF file requires Adobe Acrobat):  
<http://www.fns.usda.gov/cnd/Lunch/CompetitiveFoods/fmnv.pdf>

Brief summary of USDA regulations (not PDF):  
[http://www.fns.usda.gov/cnd/HealthyEating/CF\\_Policy.htm](http://www.fns.usda.gov/cnd/HealthyEating/CF_Policy.htm)

Link to actual USDA regulations (PDF):  
<http://www.fns.usda.gov/cnd/Regulations/7cfrpart210.pdf>

Link to information on and list of foods of minimal nutritional value (PDF):  
<http://www.fns.usda.gov/cnd/Regulations/7cfrpart210.pdf>

Specific pages are:

Section 210.11 "Competitive Food Services"

pages 31-32 (using Adobe scrolling tool on the right side of the screen, for Internet viewing), or pages 37-38 (in the print version of the actual document)

(a) Definitions. For the purpose of this section:

(1) Competitive foods means any foods sold in competition with the Program to children in food service areas during the lunch periods.

(b) General. State agencies and school food authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in appendix B of this part, in the food service areas during the lunch periods.

Here is the section from appendix B referenced just above (definition of foods of minimal nutritional value - FMNV):

Appendix B

page 59 (using the Adobe scroll tool, Internet viewing) or

page 65 (in the print version of the actual document)

#### APPENDIX B TO PART 210—CATEGORIES OF FOODS OF MINIMAL NUTRITIONAL VALUE

(a) Foods of minimal nutritional value—

Foods of minimal nutritional value are:

(1) Soda Water—A class of beverages made by absorbing carbon dioxide in potable water. The

amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of 60°F. It either contains no alcohol or only such alcohol, not in excess of 0.5 percent by weight of the finished beverage, as is contributed by the flavoring ingredient used. No product shall be excluded from this definition because it contains artificial sweeteners or discrete nutrients added to the food such as vitamins, minerals and protein.

(2) Water Ices—As defined by 21 CFR 135.160 Food and Drug Administration. Regulations except that water ices which contain fruit or fruit juices are not included in this definition.

(3) Chewing Gum—Flavored products from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

(4) Certain Candies—Processed foods made predominantly from sweeteners or artificial sweeteners with a variety of minor ingredients which characterize the following types:

(i) Hard Candy—A product made predominantly from sugar (sucrose) and corn syrup which may be flavored and colored, is characterized by a hard, brittle texture, and includes such items as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers and cough drops.

(ii) Jellies and Gums—A mixture of carbohydrates which are combined to form a stable gelatinous system of jelly-like character, and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(iii) Marshmallow Candies—An aerated confection composed as sugar, corn syrup, invert sugar, 20 percent water and gelatin or egg white to which flavors and colors may be added.

(iv) Fondant—A product consisting of microscopic-sized sugar crystals which are separated by thin film of sugar and/or invert sugar in solution such as candy corn, soft mints.

(v) Licorice—A product made predominantly from sugar and corn syrup which is flavored with an extract made from the licorice root.

(vi) Spun Candy—A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(vii) Candy Coated Popcorn—Popcorn which is coated with a mixture made predominantly from sugar and corn syrup.