

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, following is a concise explanatory statement:

AGENCY: Department of Elementary and Secondary Education

DIVISION: *(If any)*

RULE IDENTIFIER: 200-RICR-20-25-4

RULE TITLE: Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time

REASON FOR RULEMAKING:

Updating to current statutory requirements and agency practices.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE: *(if any)*

TESTIMONY AND COMMENTS:

RIDE received a written comment expressing concern that RIDE failed to conduct a cost-analysis of the economic impact of the new proposed regulations on schools and contended that the “whole grain” requirement was a new requirement requiring an increased expenditure of funds by districts and schools. Since the proposed regulation maintains the status quo with respect to State nutrition requirements and limitations on competitive foods, RIDE determined that the proposed regulation does not require “any new expenditure of money or increased expenditure of money by a city, town, or school district.”

As a result of that public comment, RIDE re-noticed the proposed regulations for an additional 30-day public review and comment period, and held another public hearing. RIDE received a total of 35 comments during the public review and comment process (please see attached public comment summary report). The majority of comments

favor the proposed regulations, noting that the strong nutrition standards benefit student, especially those most dependent on school meals.

CHANGE TO TEXT OF THE RULE:

Technical changes throughout to update citations remove non-regulatory footnotes, and incorporate examples as per new RICR format.

Summary of Proposed Changes:

The purpose of these regulations is to replace prior regulations (Rhode Island Nutrition Requirements 2009 “RINR 2009” Nutrition Criteria for RI School Food Service Programs) (simultaneously repealed) that previously included both federal and state nutrition requirements for reimbursable school meals and limitations on competitive food and beverages at mealtime. These regulations now incorporate by reference federal nutritional requirements and set forth only state-specific requirements. Taken together with the federally-imposed nutritional requirements and limitations on competitive foods and beverages, these regulations will maintain high nutrition standards for school meals that are reimbursed by the USDA and all other food and beverages that are sold on the school campus in Rhode Island. There are very few substantive changes in the existing state-specific requirements and in the actual implementation of the current regulations.

These regulations comply with RICR formatting and codification guidelines, concisely describe the specific authority and purpose for this Rule and add a definitions section of necessary regulatory terms. All non-regulatory language was deleted. The regulations now concisely set forth Rhode Island nutritional requirements for reimbursable meals and competitive foods and beverages as well as limitations on competitive foods and beverages at meal times in elementary schools.

RIDE will monitor and enforce these regulations during the USDA Administrative Review Process set forth in 7 CFR § 210.18

More specifically, the differences between the prior regulations and the proposed regulations are:

- 1) The entire “Background” section was deleted from the prior regulations as non-
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regulatory language.

2) A new section on “Authority” was added with specific citations to statutory and regulatory authority.

3) A specific “Purpose” section was added to emphasize that the regulations were intended to maintain more rigorous and additional nutritional requirements for school meals and competitive foods than those imposed by the United States Department of Agriculture (USDA).

4) A “Definitions” section was added with necessary regulatory terms.

5) An “Incorporated Materials” section was added as required by R.I. Gen. Laws § 42-35-3.2.

For Reimbursable Meals and Snacks:

6) Definition of “whole grain,” and rationale for whole grain requirement were deleted. Language describing whole grain requirement amended to read “On a weekly basis, at least one-half (1/2) of the “grain servings” in USDA meals must be one hundred (100%) percent whole grain and the remaining “grain servings” must be whole grain rich.” Limitation on grams of total sugar per ounce in whole grain products was deleted. The amended language more concisely explains the existing requirement.

7) Preference for “locally (preferably RI) grown and harvested produce” was deleted as non-regulatory language.

8) Requirement for and examples of dark green/orange vegetables were deleted. USDA Regulations presently address this requirement.

9) Requirement for and examples of orange fruits were deleted. USDA Regulations presently address this requirement.

10) Requirement for minimum number of servings of fruits and vegetables per each breakfast, lunch and afterschool snack were deleted as were the minimum number of different fruits and vegetables per week and replaced by the requirement that “in all menu-planning options, schools will offer each day, at a minimum, two (2) different fruits and/or vegetables at breakfast; three (3) different fruits and/or vegetables at lunch.” The amended language more concisely explains the existing requirement.

11) Limitation on number of servings of 100% juice offered per day for breakfast and lunch was deleted and replaced with “No more than one (1) serving of one hundred

(100%) percent juice may be offered per day. Juice may be offered at breakfast or at lunch each day, but not at both meals.” The amended language is a clarification of the existing requirement.

12) Limitation on number of servings of 100% juice offered “for every 5 consecutive snacks served” was deleted and replaced with “no more than two (2) servings of one hundred (100%) percent juice may be offered each week as part of an afterschool snack”. This change is intended to provide flexibility in menu planning for after school snacks by placing a maximum on the number of servings of 100% juice per week.

13) Restrictions on added sugars/sweeteners were deleted. USDA Regulations on maximum calories presently address this restriction.

14) Prohibition on sugar alcohols was added to prohibition on artificial sweeteners. Sugar alcohols are often substituted for sugar and/or artificial sweeteners.

15) Prohibition on Caffeine in reimbursable meals, except naturally-occurring trace amounts, was added. Although caffeine would not be expected to be present in reimbursable meals, this cannot be ruled out.

16) Limitations on sodium content in school meals were deleted. USDA Regulations presently address this requirement

17) Restrictions on milk fat content of milk were deleted. USDA Regulations presently address this requirement.

18) Requirement for one or more servings per week of cooked legumes (dried beans or peas) was deleted as were examples of dried peas or beans. USDA Regulations presently address this requirement.

For Competitive Foods:

19) Requirements for all competitive foods were added to specifically prohibit artificial sweeteners and sugar alcohols, prohibit added sweeteners in beverages and prohibit caffeine, except naturally-occurring trace amounts. The prior Regulations incorporated guidance documents that specifically listed all permitted competitive foods, to the exclusion of the items specifically listed here as prohibited.

20) Limitations on competitive foods offered at mealtimes in elementary schools were changed from “fresh milk, whole or cut fresh fruits and/or vegetables OR kitchen-prepared (unprocessed) fruit and/or vegetable side dishes” to “the entrée that is

included in that day's reimbursable meal; the same entrée when served the next school day; whole or cut fresh fruits; whole or cut fresh vegetables (may include low-fat dressing or hummus); yogurt (may be layered with fruit); water- any size of plain water (with or without carbonation); fluid milk – up to eight (8) ounce portions limited to: (a) unflavored low-fat milk (1% fat) or (b) unflavored or flavored fat free milk or (c) milk alternatives permitted by USDA National School Lunch Program. An expanded list was developed to give schools more choices in healthy competitive foods.

21) Limitation on competitive foods in middle and high schools to those foods and beverages meeting the RI Healthy Schools Coalition Nutrition Guidelines for School Vending and a la carte or those appearing on the RI Approved Product List prepared by Kids First were deleted. "Guidelines" had not been updated and are not permitted to be incorporated by reference and the "RI-Approved Product List" no longer exists.

REGULATORY ANALYSIS:

Prompted by federal statutory or regulatory changes where the agency was able to use discretion.