



Deborah S. Deltisle, Superintendent of Public Instruction

**Ohio Senate Bill 210 (SB 210)  
Questions and Answers  
For Section 3313.814, 3313.816 and 3313.817  
Nutrition Standards for Foods and Beverages  
(Published 1/28/2011)**

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

**Q1. Is a formal Board policy required? Can the policy simply say the "Alliance" or nutrient density format?**

Yes, the policy must be board or governing authority adopted. The policy must specify the types of food and beverages that may be sold on the premises of its schools, and specify the time and place each type of food or beverage may be sold. The policy cannot simply state "Alliance" or other food standards.

**Q2. Is the Ohio Department of Education (ODE) going to do a sample board policy?**

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

**Q3. If a school is not participating in the National School Lunch Program (NSLP) and is supplying 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)?**

Yes. In the definition of "A la Carte" in the law, foods that are part of a reimbursable meal or are components of a reimbursable meal are exempt from the standards. If a school is not participating in the NSLP, they would not have the opportunity for foods served to be exempt under the reimbursable meal definition and thus each individual item served would be subject to the nutrition standards for foods and beverages as specified in SB 210.

**Q4. In section 3313.814 the a la carte definition for fundraising does not state that interscholastic athletic events are outside the regular school day. Is it outside the regular school day or can an interscholastic athletic event that is being held during the school day sell anything they want because it is a fundraiser? This does happen when we get to tournament time.**

The statement related to interscholastic athletic events does not carry the caveat that the event must be conducted outside of school hours. Thus interscholastic athletic events held during school days would be exempt.

25 South Front Street  
Columbus, Ohio 43215

(877) 644-6338  
education.ohio.gov

**Q5. What is the required depth of the consult requirement with a dietitian or school nutrition specialist? Is the consultation related to SB 210 only or does it involve a consultation on the school food service program as a whole (which would entail the review of NSLP menus and the like)?**

The consultation is required in connection to the SB 210 language related to adopt and enforce nutrition standards governing the types of food and beverages that may be sold on the premises of its schools, and specifying the time and place 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 or School Breakfast Program or other school food service program operations).

**Q6. Can a group setting count as a "consult"?**

Yes, a group consult is an option as long as the person providing the consult has the qualifications as listed in 3313.814 and participants have the opportunity to ask questions and receive feedback.

**Q7. Can ODE employees provide consultation if they have the appropriate credentials as specified in the bill (i.e. can the ODE Office for Child Nutrition (OCN) offer a group instruction session either in person or via an electronic media, such as a webinar to present the information?**

Yes, as long as the ODE employee 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.

**Q8. Is the consultation required annually or once?**

It is only required upon the initial adoption of standards. A district may review the standards for amendment at any time.

**Q9. I am credited with the SNA Level 2. Does this mean I am credentialed by the school nutrition association per SB 210 guidelines?**

Only persons qualified as school nutrition specialists by the School Nutrition Association (SNA) would meet these requirements.

#### **Section 3313.816 Nutrition Standards for Beverages**

**Q10. If a school is a K-12 school with no predominant grade groupings, what beverage standards must they follow?**

If a school building has separate areas for the grade groupings (i.e. K-4 in one "pod" or wing of the building, 5-8 in another "pod" or wing etc.) in which the students do not intermingle with the other grade groups, then the different sections of the building could 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 must follow the most restrictive criteria.

**Q11. Please clarify the language in regards to use of the Alliance for a Healthier Generation standards. Is the use of the Alliance for a Healthier Generation standards specific to the competitive foods for sale in a school or does it include beverage standards as well?**

Section 3313.817 (D) is specific to food. The section on beverages (3313.816) does not provide similar flexibility. Therefore, schools must follow the beverage standards as written in SB 210 and have flexibility in making a decision on standards for food.

**Q12. The beverage standards indicate 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, would milk and juice be exempt from this calculation?**

Milk and juice are included in the 50 percent calculation unless the vending machine is only selling milk or reimbursable meals as specified in Section 3313.816 (B) (2).

**Q13. A district has recently built a coffee bar at their school for students. The school is not on the school lunch program. Is this coffee bar subject to the beverage restrictions in SB 210?**

Section 3313.816 pertains to all public and chartered nonpublic schools and is not based on participation in the NSLP. If the school in this example is a public or a chartered non public school, then the school must follow the beverage standards as specified in this section.

**Q14. Since 8 ounces of milk is a meal component, could a school have higher calorie milk on the lunch but not sell it a la carte?**

The United States Department of Agriculture (USDA) does not specify a certain type of milk type that a school must offer as part of their reimbursable school meals, as long as the milk being served is real milk and not a milk "product". A school may offer different milk flavors or milk fat contents as part of the school meals program, as long as the school is following the most current School Meal Program regulations for the provision of milk. A school must follow the specific milk standards specified in section 3313.816 for milk sold a la carte.

**Q15. Section 3313.816 (A)(3)(e) states that a school with a majority of the kids in grades nine through twelve 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. I thought that carbonated beverages were not allowed to be sold during the school day if a school is participating in the National School Lunch Program?**

The National School Lunch Program Regulations related to Foods of Minimal Nutritional Value (FMNV) prohibit the sale of foods of minimal nutritional value in the food service areas during the operation of any of the USDA Child Nutrition Programs. Carbonated beverages are defined as a FMNV per the federal regulations unless a product has received an exemption from USDA. The list of exempted foods to the FMNV rule are published yearly and available on the website at

[www.education.ohio.gov](http://www.education.ohio.gov) under Guidance and Policy Memos in the School Meal Programs section. Per NSLP regulation, state law cannot be less restrictive than federal law for FMNV. As such, all schools operating the National School Lunch Program must ensure that carbonated beverages that are not exempted from FMNV regulations are not served in the meal program serving and dining area(s) during meal program serving and eating times.

### **3313.817 Nutrition Standards for Food**

**Q16. Does food need to be the same serving size on reimbursable meals as if sold a la carte? Many schools sell items a la carte 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. I interpret this then to be that they can serve these items in whatever size they want. This will happen with sandwich bars, salad bars, large pizza, etc. Is that correct- they can serve in whatever serving size they want?**

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 then these foods would be exempt from this section.

**Q17. Do these standards only apply to foods sold at school? For example, if a school has a carnival and gives out free cotton candy or other foods, would this be exempt because the students are not being charged?**

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

**Q18. When will the free software be made available to schools to use to comply with the nutrition standards for foods?**

ODE will make the software available as soon as possible, but no later than July 1, 2011.