

**This is an amendment to 6.12.5 NMAC, Sections 2, 7 and 8, effective 8-15-14.**

**TITLE 6           PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 12   PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY**  
**PART 5           NUTRITION: COMPETITIVE FOOD SALES**

**6.12.5.1           ISSUING AGENCY:** Public Education Department  
[6.12.5.1 NMAC - N, 02-28-06; A, 07-15-14]

**6.12.5.2           SCOPE:** This rule applies to public and private schools in New Mexico participating in the United States department of agriculture school meal program unless otherwise expressly limited.  
[6.12.5.2 NMAC - A, 08-15-14]

**6.12.5.3           STATUTORY AUTHORITY:** This rule is adopted pursuant to Sections 22-2-1 and 9-24-8, NMSA 1978.  
[6.12.5.3 NMAC - N, 02-28-06]

**6.12.5.4           DURATION:** Permanent  
[6.12.5.4 NMAC - N, 02-28-06]

**6.12.5.5           EFFECTIVE DATE:** February 28, 2006, unless a later date is cited at the end of a section.  
[6.12.5.5 NMAC - N, 02-28-06]

**6.12.5.6           OBJECTIVE:** This rule addresses the sale of competitive food sold to children attending public schools in New Mexico.  
[6.12.5.6 NMAC - N, 02-28-06]

**6.12.5.7           DEFINITIONS:**

A.           “A la carte” means a beverage or food product sold in schools to students during the breakfast and lunch period that is not part of the United States department of agriculture school meal program.

B.           “Competitive food” means a food or beverage sold at school other than one served as part of the United States department of agriculture school meal program. The term includes any item sold in vending machines, a la carte or through other school fundraising efforts.

C.           “Fund raisers” means ~~[beverage or food products sold to raise money that are not sold in vending machines, a la carte sales or as part of the United States department of agriculture school meal program.]~~ an activity during which currency, tokens, tickets or other items of value are exchanged for the sale or purchase of a product in support of a school or school-related activity. A fund raiser may be conducted during school hours a maximum of one time per semester or trimester per school.

D.           “School hours” for purposes of this rule extend from 12:01 a.m. to a half-hour after the end of the school day.

~~D.]E.~~       “Vended beverages and foods” means a beverage or food product sold in vending machines to students in schools.  
[6.12.5.7 NMAC - N, 02-28-06; A, 08-15-14]

**6.12.5.8           REQUIREMENTS FOR COMPETITIVE FOODS SOLD TO STUDENTS:**

- A.           Vended foods and beverages:
- (1)          Elementary schools:
- (a)          Beverages sold in vending machines to students in elementary schools shall ~~[only]~~ be sold only after the last lunch period is completed and shall ~~[only]~~ include only:
- (i)          ~~[milk with a fat content of 2 percent or less]~~ fat-free (unflavored and flavored) and unflavored low-fat milk not to exceed 8 ounces;
- (ii)          soy milk; and
- (iii)          water.
- (b)          Carbonated beverages shall not be sold in vending machines to students in elementary schools.
- (c)          Food products shall not be sold in vending machines to students in elementary schools.

(2) Middle schools:

- (a) Beverages sold in vending machines to students in middle schools shall ~~only~~ include only:
- (i) ~~[milk with a fat content of two percent or less]~~ fat-free (unflavored or flavored) and unflavored low-fat milk not to exceed 12 ounces;
  - (ii) soy milk;
  - (iii) water; and
  - (iv) 100 percent fruit juice that has no added sweeteners and no more ~~than~~ than 125 calories per container and a serving size not to exceed ~~[20]~~ 12 ounces.
- (b) Carbonated beverages shall not be sold in vending machines to students in middle schools.
- (c) Food products sold in vending machines to students in middle schools are subject to the following requirements:
- (i) Nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit may be sold in vending machines in middle schools at any time and are not subject to the restrictions in item (ii) of this subparagraph.
  - (ii) Food products other than those listed in item (i) of this subparagraph shall ~~only~~ be sold only after ~~[the last lunch period is completed and are subject to the following restrictions: shall contain no more than 200 calories per container or per package or amount served and shall contain no more than 8 grams of fat per container or per package or amount served with no more than 2 grams of fat from saturated and trans fats and shall contain no more than 15 grams of sugar per package or amount served]~~ school hours.

(3) High schools:

- (a) Beverages sold in vending machines to students in high schools at any time shall ~~only~~ include only:
- (i) ~~[milk with a fat content of 2 percent or less]~~ fat-free (unflavored or flavored) and unflavored low-fat milk not to exceed 12 ounces;
  - (ii) soy milk;
  - (iii) water; and
  - (iv) 100 percent fruit juice that~~[is at least 50 percent fruit and that]~~ has no added sweeteners and a serving size not to exceed ~~[20]~~ 12 ounces.
- (b) Beverages sold in vending machines to students in high schools after the last lunch period is completed shall only include the items in subparagraph (a) and:
- (i) ~~[carbonated soft drinks that are both sugar free and caffeine free]~~ calorie-free, flavored or unflavored carbonated water not to exceed 20 ounces;
  - (ii) calorie-free non-carbonated flavored water with no added sweeteners not to exceed 20 ounces; and
  - (iii) sports drinks that do not exceed 5 calories per serving and do not exceed 20 ounces.
- (c) Food products sold in vending machines to students in high schools may be sold at any time subject to the following requirements:
- (i) Nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit may be sold in vending machines in high schools at any time and are not subject to the restrictions in item (ii) of this subparagraph.
  - (ii) Food products other than those listed in item (i) of this subparagraph ~~[are subject to the following restrictions: shall contain no more than 200 calories per container or per package or amount served and shall contain no more than 8 grams of fat per container or per package or amount served with no more than 2 grams of fat from saturated and trans fats and shall contain no more than 15 grams of sugar per container or per package or amount served]~~ shall be sold only after school hours.

B. A la carte offerings must meet the following requirements:

- (1) Beverages sold in a la carte offerings may~~only~~ be sold only during breakfast and lunch ~~[period]~~ periods and shall ~~only~~ include only:
- (a) Elementary schools:
    - (i) fat-free (unflavored or flavored) and unflavored low-fat milk [with a fat content of 2 percent or less] not to exceed 8 ounces;
    - (ii) soy milk; and
    - (iii) water.
  - (b) Middle schools:
    - (i) fat-free (unflavored or flavored) and unflavored low-fat milk [with a fat content of two percent or less] not to exceed 12 ounces;

(ii) soy milk;  
(iii) water; and  
(iv) 100 percent fruit juice that has no added sweeteners and no more ~~that~~ than 125 calories per container and a serving size not to exceed [20] 12 ounces.

(c) High schools:

(i) fat-free (unflavored or flavored) and unflavored low-fat milk [with a fat content of 2 percent or less] not to exceed 12 ounces;

(ii) soy milk;

(iii) water; and

(iv) 100 percent fruit juice that ~~[is at least 50 percent fruit and that]~~ has no added sweeteners and a serving size not to exceed [20] 12 ounces.

(2) Carbonated beverages or soft drinks, non-carbonated flavored water and sports drinks shall not be sold in a la carte offerings.

(3) Food products sold in a la carte offerings may ~~[only]~~ be sold only during lunch and are subject to the following requirements:

(a) Nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit are not subject to the restrictions in subparagraph (b) of this paragraph.

(b) Food products other than those listed in subparagraph (a) of this paragraph are subject to the following restrictions:

(i) snack items/side dishes shall contain no more than [400] 200 calories per container or per package or amount served and no more than 200 mg of sodium; and

(ii) entrée items shall contain no more than 350 calories per container or per package or amount served and no more than 480 mg or sodium; and

~~[(ii)]~~ (iii) shall contain no more than 16 grams of fat per container or per package or amount served, of which no more than 2 grams come from saturated fat and trans fats combined; and

~~[(iii)]~~ (iv) shall contain no more than 30 grams of total sugar per package or amount served.

C. Fund raisers:

(1) ~~[Beverages and food products may be sold as fund raisers at any time during normal school hours except during the lunch period and are subject to the following requirements and limitations:~~

~~(a) Elementary schools:~~

~~(i) Beverages sold shall only include: milk with a fat content of 2 percent or less; soy milk; and water. Carbonated beverages shall not be sold.~~

~~(ii) Food products shall not be sold as fund raisers to students in elementary schools.~~

~~(b) Middle schools:~~

~~(i) Beverages sold shall only include: milk with a fat content of 2 percent or less; soy milk; water; and one hundred percent fruit juice that has no added sweeteners and no more than 125 calories per container and a serving size not to exceed 20 ounces. Carbonated beverages shall not be sold.~~

~~(ii) Food products sold are subject to the following requirements: nuts, seeds, cheese, yogurt, and fruit may be sold and are not subject to restrictions; food products other than nuts, seeds, cheese, yogurt and fruit shall contain no more than 200 calories per container or per package or amount served and shall contain no more than 8 grams of fat per container or per package or amount served with no more than 2 grams of fat from saturated and trans fats and shall contain no more than 15 grams of sugar per container or per package or amount served.~~

~~(c) High schools:~~

~~(i) Beverages sold shall only include: milk with a fat content of 2 percent or less, soy milk, water and juice that is at least 50 percent fruit and that has no added sweeteners and a serving size not to exceed 20 ounces.~~

~~(ii) Food products sold are subject to the following requirements: nuts, seeds, cheese, yogurt, and fruit may be sold and are not subject to restrictions; food products other than nuts, seeds, cheese, yogurt and fruit shall contain no more than 200 calories per container or per package or amount served and shall contain no more than 8 grams of fat per container or per package or amount served with no more than 2 grams of fat from saturated and trans fats and shall contain no more than 15 grams of sugar per container or per package or amount served.] A fund raiser that does not follow the restrictions of this competitive foods rule may be held during school hours one time per semester or trimester at the discretion of the principal or charter school director.~~

~~(2) [Beverages and food products may be sold as] A fund [raisers]raiser [outside of normal] may be~~

held after school hours provided that at least 50 percent of the offerings meet the following requirements:

(a) Beverages: fat-free (unflavored or flavored) and unflavored low-fat milk~~[with a fat content of 2 percent or less]~~; soy milk, water and juice that is at least 50 percent fruit and that has no added sweeteners and a serving size not to exceed ~~[20]~~ 12 ounces.

(b) Food products: nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit may be sold and are not subject to restrictions; food products other than nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served and fruit shall contain no more than 200 calories per container or per package or amount served and shall contain no more than 8 grams of fat per container or per package or amount served with no more than 2 grams of fat from saturated and trans-fats, and shall contain no more than 15 grams of sugar per container or per package or amount served.

[6.12.5.8 NMAC - N, 02-28-06; A, 08-15-14]

History of 6.12.5 NMAC: [Reserved]