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STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

BRIAN J. WHISTON STATE
SUPERINTENDENT

FOOD SERVICE

ADMINISTRATIVE POLICY NO. 21 SCHOOL YEAR 2014-2015

SUBJECT: Non-Compliant Food Fundraiser Guidance

DATE: June 24, 2015

The United States Department of Agriculture (USDA) requires School Food Authorities (SFAs) participating in the National School Lunch Program (NSLP) to follow nutrition standards for all foods sold during the school day outside of federal meal programs intended for immediate consumption, also called "competitive foods." These "Smart Snacks in Schools" standards also permit each state to set a fixed number of exemptions for non-compliant food fundraisers. As a result, the State of Michigan enacted Public Act 42 (PA 42) which states, "the department shall ensure that this upper limit is not less than two fundraising activities per week. For the purposes of this upper limit, an ongoing fundraising activity that is scheduled to take place at more than one time during a school day or throughout the school day shall be considered to be a single fundraising activity." This policy memo is intended to provide clarification and guidance for SFAs regarding these Smart Snacks exemptions beginning July 1, 2015.

Upper Limit

The Michigan Department of Education (MDE) will allow up to two food-based fundraising activities per week that do not meet the USDA Smart Snacks in Schools standards. These exemptions are optional and chosen at the local level by each school building.

Week

A week is defined as a calendar week during the regular school year, during which a school is participating in the NSLP.

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Single Fundraising Activity

According to PA 42, “an ongoing fundraising activity that is scheduled to take place at more than one time during a school day or throughout the school day shall be considered to be a single fundraising activity.” This means that each exempt food fundraiser may last only one day in duration (more than one sale time during a single school day is allowed). For example, a school store cannot sell non-compliant food or beverage items more than two days in a single week. If a school store sold non-compliant food items on two separate days in a single week, then no other non-compliant food fundraisers may take place in that same school building that same week.

It is important to note that according to the Smart Snacks Interim Final Rule (7 CFR Parts 210 and 220), “no specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during meal service.” Therefore, these new exemptions are not allowed to directly compete with federally reimbursable meals, such as those provided by NSLP or the Child and Adult Care Food Program (CACFP).

The USDA requires each SFA to maintain an up-to-date Local Wellness Policy (LWP). It is acceptable to have LWP restrictions that are stricter than the minimum standards set forth by the state or federal government. Therefore, districts not wishing to allow exempt food fundraising activities in their buildings have the option of implementing this within their own LWP. MDE recommends that the LWP team work closely with building administrators to ensure compliance and proper tracking of the food fundraiser exemptions.

MDE requires each school building to track its own exemption approvals and ensure that only the allowable number of exemptions are granted. These entities are also required to ensure that all other competitive foods and beverages sold to students during the school day meet the Smart Snacks standards. Compliance with Smart Snacks standards will be monitored during Administrative Reviews of school nutrition programs. Based on these reviews, technical assistance will be provided to districts and/or schools and corrective action will be prescribed, as appropriate, in relation to compliance with Smart Snacks standards and the allowable Michigan exemptions. Noncompliance found during an Administrative Review of School Nutrition Programs will result in required corrective action and possibly may result in fiscal action, if approved by USDA.

More information on Smart Snacks standards is available from the Michigan Smart Snacks website at http://www.michigan.gov/mde/0,4615,7-140-43092_50144-327975--,00.html and the USDA Smart Snacks website at <http://www.fns.usda.gov/healthierschoolday/tools-schools-focusing-smart-snacks>.

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More information on LWP requirements is available on the Michigan LWP website at http://www.michigan.gov/mde/0,4615,7-140-43092_50144-194546--,00.html and USDA LWP website at <http://www.fns.usda.gov/tn/local-school-wellness-policy>.

Questions regarding this Administrative Policy may be directed to the School Nutrition Programs unit by e-mail to MDE-SchoolNutrition@michigan.gov.