

United States Department of Agriculture
7 CFR 210—Child Nutrition Programs
Foods of Minimal Nutritional Value

§ 210.11 Competitive food services.

(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.

(2) *Food of minimal nutritional value* means: (i) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intakes (RDI) for each of eight specified nutrients per serving; and (ii) in the case of all other foods, a food which provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are—protein, vitamin A, vitamin C, niacin, riboflavin, thiamine, calcium, and iron. All categories of food of minimal nutritional value and petitioning requirements for changing the categories are listed in appendix B of this part.

(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. The sale of other competitive foods may, at the discretion of the State agency and school food authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service or the school or student organizations approved by the school. State agencies and school food authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the Program.

[53 FR 29147, Aug. 2, 1988, as amended at 59 FR 23614, May 6, 1994]

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.

(b) *Petitioning Procedures*—Reconsideration of the list of foods of minimal nutritional value identified in paragraph (a) of this section may be pursued as follows:

(1) Any person may submit a petition to FNS requesting that an individual food be exempted from a category of foods of minimal nutritional value listed in paragraph (a). In the case of artificially sweetened foods, the petition must include a statement of the percent of Reference Daily Intake (RDI) for the eight nutrients listed in § 210.11(a) (2) “Foods of minimal nutritional value,” that the food provides per serving and the petitioner’s source of this information. In the case of all other foods, the petition must include a statement of the percent of RDI for the eight nutrients listed in § 210.11(a)(2) “Foods of minimal nutritional value,” that the food provides per serving and per 100 calories and the petitioner’s source of this information. The Department will determine whether or not the individual food is a food of minimal nutritional value as defined in § 210.11(a)(2) and will inform the petitioner in writing of such determination, and the public by notice in the FEDERAL REGISTER as indicated below under paragraph (b)(3) of this section. In determining whether an individual food is a food of minimal nutritional value, discrete nutrients added to the food will not be taken into account.

(2) Any person may submit a petition to FNS requesting that foods in a particular category of foods be classified as foods of minimal nutritional value as defined in § 210.11(a)(2). The petition must identify and define the food category in easily understood language, list examples of the food contained in the category and include a list of ingredients which the foods in that category usually contain. If, upon review of the petition, the Department determines that the foods in that category should not be classified as foods of minimal nutritional value, the petitioners will be so notified in writing. If, upon review of the petition, the Department determines that there is a substantial likelihood that the foods in that category should be classified as foods of minimal nutritional value as defined in § 210.11(a)(2), the Department shall at that time inform the petitioner. In addition, the Department shall publish a proposed rule restricting the sale of foods in that category, setting forth the reasons for this action, and soliciting public comments. On the basis of comments received within 60 days of publication of the proposed rule and other available information, the Department will determine whether the nutrient composition of the foods indicates that the category should be classified as a category of foods of minimal nutritional value. The petitioner shall be notified in writing and the public shall be notified of the Department's final determination upon publication in the FEDERAL REGISTER as indicated under paragraph (b)(3) of this section.

(3) By May 1 and November 1 of each year, the Department will amend appendix B to exclude those individual foods identified under paragraph (b)(1) of this section, and to include those categories of foods identified under paragraph (b)(2) of this section, *provided*, that there are necessary changes. The schedule for amending appendix B is as follows:

Actions for publication.	Publication	
	May	November
Deadline for receipt of petitions by USDA	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 Day comment period	Feb. 1 through Apr. 1.	Aug. 1 through Oct. 1.
Public notice of amendment of appendix B by.	May 1	Nov. 1.

(4) Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Division, FNS, USDA, Alexandria, Virginia 22302, on or before November 15 or May 15 of each year. Petitions must include all information specified in paragraph (b) of this appendix and § 220.12(b) (1) or (2) as appropriate.

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