

**Colorado Department of Education**

**Colorado State Board of Education**

**Food and Nutrition Services**

**1 CCR 301-3**

Adopted: 6-8-95; Amended 2-12-98

Attorney General Opinion: 6-27-95; 2-25-98

Statutory Authority: 22-2-108, C.R.S. AND 22-2-107 (1) (c), C.R.S.

**Food and Nutrition Services**

**2202-R-200.00 Basis and Purpose**

200.01 The basis and purpose of these rules relating to Food and Nutrition Services are:

To preserve and protect the nutritional integrity of Food and Nutrition Service operations in school districts, recognizing the proven link between nutrition and a child's ability to learn, as well as to foster the Declaration of Policy and Purpose set forth in the National School Lunch Act (42 U.S.C., 1751 Et. Seq.) and the Child Nutrition Act (42 U.S.C., 1771 Et. Seq.), as amended, and;

To preserve and protect the fiscal integrity of Food and Nutrition Service operations in school districts, recognizing the unique nature of an enterprise operating in a nonprofit environment, and;

To assist district Food and Nutrition Service operations in complying with federal and state law and regulations pertaining to such operations, and;

To recognize the authority under which such programs operate, specifically:

22-2-107(1)(C), C.R.S.      State Board - Powers  
22-2-108, C.R.S.          Federal Financial Assistance  
22-32-120, C.R.S.        Food Services - Facilities  
42 U.S.C., 1751 ET. SEQ. National School Lunch Act (PL 79-396), as amended  
42 U.S.C., 1771 ET. SEQ. Child Nutrition Act (PL 89-642), as amended

**2202-R-201.00 Agreement**

201.01 Where food service is provided and reimbursement from federal Child Nutrition program funds is requested, the district shall enter into a written agreement with the Colorado Department of Education (CDE).

201.02 The Agreement between the district and CDE is for a one year period beginning July 1 and ending June 30, and must be renewed annually.

201.03 Reimbursement from federal funds may not be made to a district unless an approved current agreement is on file at CDE.

201.04 As part of the agreement, the district assures:

Meals claimed for reimbursement shall meet the requirements established by the United States Department of Agriculture (USDA) under the National School Lunch Act and/or the Child Nutrition Act, as amended.

**2202-R-201.00 Agreement (continued)**

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For each school, all students will have an opportunity to be served and have reasonable time to consume their meals, in keeping with the Basis and Purpose as set forth in Section 200.01 of these rules.

Free and reduced price meals shall be provided, as outlined in the Free and Reduced Policy of the district. This policy is to be incorporated by reference into the agreement.

All food service personnel shall meet all state, county and/or local health standards, as required. The district may establish written policies exceeding existing health standards.

The district shall provide adequate physical facilities for both preparation and dining areas in accordance with state, county, and local health standards, as applicable.

- 201.05 Each meal claimed for reimbursement must be priced as a unit. Unit prices shall be specified in the agreement, and are subject to change only upon written agreement between the district and CDE.
- 201.06 Failure to comply with these rules or the spirit and intent of the USDA rules and regulations will make the agreement subject to review and possible cancellation after notice.
- 201.07 Should there be a breach of contract, knowingly or unknowingly, the district shall be notified by CDE in writing of the areas which need correction. If after thirty days adequate corrective action has not taken place, the agreement shall be subject to cancellation.

### **2202-R-202.00 Supplemental Food Service**

- 202.01 Supplemental (a la carte) foods and beverages are those foods and beverages offered by the district's food service program that are separate and apart from reimbursable meals.
- 202.02 Supplemental foods and beverages may be sold or served free of charge by the district's food service program at the same time and place as reimbursable meals, with the exception of Foods of Minimal Nutritional Value as defined by USDA.
- 202.03 The income from the sale of supplemental foods and beverages shall accrue to the district's food service program.

### **2202-R-203.00 Competitive Food Service**

- 203.01 In those schools participating in the School Breakfast and/or National School Lunch program(s), competitive food service is any food or beverage service available to students that is separate and apart from the district's nonprofit federally reimbursed food service program, and is operated by school-approved organizations or by school-approved outside vendors.

### **2202-R-203.00 Competitive Food Service (continued)**

203.02 Such competitive food service shall not operate in competition with the district's food service program, and shall be closed for a period beginning ½ hour prior to and remain closed until ½ hour after the last regular scheduled school lunch and/or school breakfast period on the campus where the school lunch and/or school breakfast is served.

203.03 In cooperation with, and upon the approval of, the district official responsible for the operation of the district's food service program participating in the School Breakfast and/or National School Lunch program(s), the restriction in Section 203.02 may be waived for the service of competitive, mechanically-vended beverages offered to students at the senior high level. Provided, however, that no federal rules or regulations relating to competitive food service or Foods of Minimal Nutritional Value may be waived for any grade level.

To promote the nutrition objectives of the School Breakfast and National School Lunch programs, and to preserve the fiscal integrity of the district's food service program, districts are encouraged to apply the restriction of Section 203.02 to all grade levels at all schools.

203.04 All schools participating in the School Breakfast and/or National School Lunch program(s) must also comply with any federal rules or regulations regarding competitive food service or the service of Foods of Minimal Nutritional Value, as defined by USDA.

**2202-R-204.00 Audit**

204.01 The district, in operating its food service program, shall conform to established state and federal audit requirements.

**2202-R-205.00 USDA Donated Commodities**

205.01 School districts may enter into written agreement with the Colorado Department of Human Services, Food Distribution Unit, for the receipt and use of USDA donated commodities.

**2202-R-206.00 Funds**

206.01 Any surplus accruing from the operation of the district's food service program shall be retained by and used for the support of the food service program, and shall not be used for any other purpose.

206.02 Any surplus accruing from the program shall be used to reduce the price of meals to the children, to improve the quality of the meals, to provide basic supplies, to replace equipment, and to make repairs to equipment. All other expenses are the responsibility of the district from other district funding sources.

206.03 A separate fund shall be maintained for the food service program, in order to identify all expenses and revenues.

206.04 Food service funds shall not be used to pay salaries or wages for dining room supervision.

**2202-R-206.00 Funds (continued)**

206.05 For each school year, indirect costs may be recovered from the food service fund, but shall be limited

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to that amount established by the approved nonrestricted indirect cost rate from the prior school year's financial data as reported to CDE. Under no circumstances may the amount recovered cause the Current Operating Resources to fall below a level of 30 percent of the total operating cost from the prior school year's financial data as reported to CDE. Current Operating Resources is defined as current assets less current liabilities, except that current assets shall not include the value of USDA donated foods for the purposes of computing Current Operating Resources.

Any indirect costs recovered from the food service fund must first be reduced by any amounts directly assessed from the food service fund relating to the indirect cost areas as defined in the indirect cost rate agreement between CDE and the U.S. Department of Education.

### **2202-R-207.00 Records**

- 207.01 Records must be kept in such a way as to substantiate the claims of the district and meet the requirements of the United States Department of Agriculture. At a minimum, all records pertaining to the federal Child Nutrition programs, including claims and supporting documentation, must be retained for a period of three years after the end of the federal fiscal year (October 1 through September 30) to which they pertain. If audit findings have not been resolved, the records shall be maintained beyond the three-year period as long as required for resolution of issues raised by the audit.

### **2202-R-208.00 Food Service Management Companies**

- 208.01 Districts may contract for the services of a Food Service Management Company (FSMC).
- 208.02 Districts wishing to enter into a FSMC contract must comply with all federal and state rules and regulations pertaining to such FSMC contracts.
- 208.03 To insure compliance with state and federal requirements relating to contracting with FSMC's, districts must utilize the Request for Proposal (RFP) and Contract prototypes and procedures as provided by CDE.
- 208.04 All RFP documents must be approved by CDE prior to release of the RFP. All Contracts must be approved by CDE prior to the inception of the contract.
- 208.05 The district must maintain control of meal prices, and retain signature authority on all agreements, reimbursement claims, Free and Reduced Price Policy implementation, and any other required forms and reports.