

Snack Foods and Beverages In Kentucky Schools

A comparison of state policy with USDA's nutrition standards

Kentucky Regulatory Statute 158.854, enacted in 2005, requires the state Board of Education to promulgate an administrative regulation to specify the minimum nutritional standards for food and beverages sold outside the school meal programs. As a result, Kentucky Administrative Regulation 702, Section 6.090 was established. As of July 1, 2014, Kentucky schools must adhere to whichever standard is more restrictive—the U.S. Department of Agriculture's interim final rule or state law.

Policy Applications		
	USDA interim final rule	Kentucky standards ¹
What is covered by the policy?	This policy applies to all snack foods and beverages sold in schools—elementary, middle, and high—operating the National School Lunch Program (NSLP) and School Breakfast Program (SBP) effective July 1, 2014.	This policy applies to all snack food and beverages sold statewide in elementary, middle, and high schools
Does the policy address preemption?	The interim final rule sets minimum standards for foods and beverages that local educational agencies, school food authorities, and schools must meet. State agencies and/or local school districts may establish other standards if they are consistent with or stricter than the national policy.	School districts may impose more stringent standards than those required under the administrative regulation.
Definition of "school day"	The period from 12:01 a.m. until 30 minutes after the end of the instructional day.	The time between the first student's arrival at the school building and the end of the last instructional period. This policy does not apply to the extended school day, meaning after-school activities are not affected. No school may sell competitive foods or beverages from the arrival of the first student at the school building until 30 minutes after the last lunch period.* From the period of 30 minutes after the last lunch period until the end of the last instructional period, nutrition standards apply.
Definition of "school campus"	All areas of the school's property accessible to students during the school day are considered part of the school campus.	All areas of the school property, including vending machines, school stores, canteens, and fundraisers.

¹ This chart reflects state policies in place as of Aug. 1, 2014, and federal standards as of Sept. 11, 2014.

Foods		
	USDA interim final rule	Kentucky standards
General	<p>A food item must meet all the competitive food-nutrient standards, as outlined in this chart, and</p> <ul style="list-style-type: none"> be a whole-grain product containing 50% or more whole grains by weight or have whole grains listed as the first ingredient, or have as the first ingredient one of the non-grain major food groups: a fruit, vegetable, dairy product, protein food, or be a combination food that contains at least ¼ cup of fruit and/or vegetable, or Through June 30, 2016, a competitive food can contain 10 percent of the Daily Value of a nutrient of public health concern as identified in the <i>Dietary Guidelines for Americans</i> (i.e. calcium, potassium, vitamin D or dietary fiber). <p>If water is the first ingredient, the second must be one of the food items above.</p>	<p>In addition to following the USDA Smart Snacks standards, foods must also meet the following federal and state nutrient standards:</p> <ul style="list-style-type: none"> Federal: whole grain, sodium, calories, and trans fat State: fat, saturated fat, and sugar (with the federal's non-allowance of combination foods) <p>Food items must also adhere to the state regulation of portion sizes as outlined below.⁷</p>
Calories (per item as packaged or served)	<p>≤ 200 calories for snacks and side dishes</p> <p>≤ 350 calories for entree items</p>	State must adhere to the USDA Smart Snacks standard
Total fat	≤ 35% of total calories	≤ 30% of total calories ⁷
Saturated fat	≤ 10% of total calories	< 10% of total calories
Trans fat	Zero grams	State must adhere to the USDA Smart Snacks standard
Sugar (per item as packaged or served)	≤ 35% of weight from total sugars in foods	<p>≤ 32% of weight from total sugars in foods⁷ and</p> <p>≤ 14 grams per item⁷</p>
Sodium (per item as packaged or served)	<p>≤ 230 mg of sodium for snack items (July 2014-June 30, 2016)</p> <p>≤ 200 mg of sodium for snack items (as of July 1, 2016)</p> <p>≤ 480 mg of sodium for entree items</p>	State must adhere to the USDA Smart Snacks standard for snack items and side dishes. All entree items follow the federal sodium standard with the exception of pastas, meats and soups, which follow the state standard of ≤450 mg. ⁷

Foods		
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Other	<p>NSLP and SBP entrees sold a la carte are exempt from the rule's nutrient standards if sold on the day that they are offered as part of a reimbursable meal, or sold on the following school day.</p> <p>Accompaniments, such as condiments or salad dressing, must be included in the nutrient profile as a part of the item served.</p>	<p>Portion size restrictions:</p> <ul style="list-style-type: none"> • 2 oz for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, or jerky • 1 oz for cookies • 2 oz for cereal bars, granola bars, pastries, muffins, doughnuts, bagels or other bakery-type items • 8 oz for non-frozen yogurt • 4 oz for frozen dessert items, including low-fat or fat-free ice cream, frozen fruit juice bars, or frozen real fruit items <p>Entrees that are creditable under the National School Lunch Program and the School Breakfast Program and sold a la carte are exempt from nutrient standards on the day the entree item is planned on the reimbursable meal menu or the day after. Served at any other time, these items must meet requirements for calories, whole grains, portion size, and sodium, and all other competitive food nutrient standards.</p> <p>For accompaniments, schools must follow the USDA Smart Snacks standard.</p>

Beverages		
	USDA interim final rule	Kentucky standards
General	Elementary and middle schools may only sell low-fat or nonfat milk, 100 percent fruit and/or vegetable juice, and water per USDA's portion guidelines. High schools may sell additional beverages meeting calorie and serving size limits.	
Juice		
Elementary	100% fruit/vegetable juice ≤ 8 fl oz 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 8 fl oz	100% fruit or vegetable juice or any combination of both totaling 100% juice, with no added sweeteners ≤ 8 fl oz
Middle	100% fruit/vegetable juice ≤ 12 fl oz 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 12 fl oz	100% fruit or vegetable juice or any combination of both totaling 100% juice, with no added sweeteners ≤ 12 fl oz
High	100% fruit/vegetable juice ≤ 12 fl oz 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 12 fl oz	100% fruit or vegetable juice or any combination of both totaling 100% juice, with no added sweeteners ≤ 12 fl oz
Milk and milk alternatives		
Elementary	Low-fat milk, unflavored ≤ 8 fl oz Nonfat milk, plain or flavored ≤ 8 fl oz Nutritionally equivalent milk alternatives ≤ 8 fl oz	USDA Smart Snacks standard for milk applies, however, nutritionally equivalent milk alternatives are not allowed under state law.
Middle	Low-fat milk, unflavored ≤ 12 fl oz Nonfat milk, plain or flavored ≤ 12 fl oz Nutritionally equivalent milk alternatives ≤ 12 fl oz	USDA Smart Snacks standard for milk applies, however, nutritionally equivalent milk alternatives are not allowed under state law.
High	Low-fat milk, unflavored ≤ 12 fl oz Nonfat milk, plain or flavored ≤ 12 fl oz Nutritionally equivalent milk alternatives ≤ 12 fl oz	Smart Snacks standard for milk applies; however, nutritionally equivalent milk alternatives are not allowed under state law.
Water		
All grades	Potable water must be available at no charge during meal service where breakfast and lunches are served. There is no ounce restriction on plain water for sale (carbonated or noncarbonated).	Plain, non-caloric, noncarbonated water allowed (no size limit).

Beverages		
	USDA interim final rule	Kentucky standards
Other beverages		
	<p>Other beverages allowed only in high school:</p> <p>Calorie-free, flavored and/or carbonated water and other calorie-free beverages that comply with the Food and Drug Administration's requirement of ≤ 5 calories per 8 fluid oz serving (or ≤ 10 calories per 20 fluid oz), in no more than 20 oz servings.</p> <p>Beverages ≤ 40 calories per 8 fluid oz serving (or ≤ 60 calories per 12 fluid oz serving) in no more than 12 oz servings are also allowed.</p>	<p>Other beverages allowed only in high schools:</p> <ul style="list-style-type: none"> Any other flavored and/or carbonated beverage (20 ounces or less) that is labeled to contain 5 calories or less per 8 ounces, or 10 calories or less per 20 ounces; and contains no more than 10 grams of sugar per serving. Any other flavored and/or carbonated beverage (12 ounces or less) that is labeled to contain 40 calories or less per 8 ounces, or 60 calories or less per 12 ounces; and contains no more than 10 grams of sugar per serving.
Caffeine		
Elementary	Not allowed	State must adhere to the USDA Smart Snacks standard
Middle	Not allowed	State must adhere to the USDA Smart Snacks standard
High	Caffeinated beverages allowed	State must adhere to the USDA Smart Snacks standard
Artificial sweeteners		
	No standard	No standard

Other		
	USDA interim final rule	Kentucky standards
Fundraisers	<p>Exemptions allowed for infrequent school-sponsored fundraisers.</p> <p>Frequency to be defined by state agency.</p> <p>Exempted fundraiser foods or beverages may not be sold in competition with school meals in the food service area during the meal service.</p>	Nutrition standards apply to fundraisers with no exemptions allowed. This policy does not place limits on fundraisers conducted off-site.
Class parties/school celebrations	No standard	No standard
Food marketing	No standard included in the USDA Smart Snacks interim final rule; however, USDA's proposed rule on Local Wellness Policies addresses this component.	No standard
Positive nutritional value	No standard	No standard
Nutrition labeling requirements	No standard	No standard
Local Wellness Policy	No standard included in the USDA Smart Snacks interim final rule; however, school districts are required by federal law to have a Local Wellness Policy.	No standard
Other		Retail fast food in the cafeteria is limited to once per week whether sold by contract, commercial vendor, or otherwise.

Exemptions to food and beverage standards		
	USDA interim final rule	Kentucky standards
General		
General exemptions	<p>Fresh, canned, and frozen fruit or vegetables with no added ingredients except water, or in the case of fruit, packed in 100 percent juice, extra light, or light syrup are exempt from the interim final rule's nutrient standards.</p> <p>Canned vegetables that contain a small amount of sugar to maintain the quality and structure of the vegetable are exempt from the rule's nutrient standards.</p> <p>Sugar-free chewing gum is exempt from competitive food standards and may be sold to students at the discretion of the local educational agency.</p> <p>"Paired exemptions" are items designated as exempt from one or more of the nutrient requirements individually and packaged together without any additional ingredients. These items retain their individually designated exemption for total fat, saturated fat, and/or sugar when packaged together and sold. "Paired exemptions" are required to meet the calorie and sodium limits for Smart Snacks.</p>	<p>Consistent with USDA Smart Snacks standards, however, the state restriction of no more than 14 grams of sugar would override some federal exemptions listed.</p> <p>Sugar-free chewing gum is exempt from all competitive food standards.</p>
Exemptions from total fat	<p>Nuts, seeds, nut/seed butters</p> <p>Reduced-fat and part-skim mozzarella cheeses</p> <p>Products consisting of only dried fruits with nuts and/or seeds, with no added nutritive[†] sweetener or fat</p> <p>Seafood with no added fat</p> <p>Combination foods are not exempt and must meet all nutrient standards.</p>	<p>State regulation allows for exemptions from the total fat requirement for nuts, seeds, nut butters, and reduced-fat cheese. The additional federal exemptions will not apply, as they are not exempt from the state regulation.</p> <p>Combination products are not exempt from the standard.</p>
Exemptions from saturated fat	<p>Nuts, seeds, nut/seed butters</p> <p>Reduced-fat and part-skim mozzarella cheeses</p> <p>Products consisting of only dried fruits with nuts and or seeds, with no added nutritive sweetener or fat</p> <p>Combination products are not exempt and must meet all nutrient standards.</p>	<p>State regulation does not identify allowable exemptions to the requirement for saturated fat.</p>
Exemptions from sugar (per item as packaged or served)	<p>Dried whole fruit or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruit or vegetables with no added nutritive sweeteners</p> <p>Dried fruit with added nutritive sweeteners required for processing and/or palatability purposes</p> <p>Products consisting of only dried fruits with nuts and or seeds with no added nutritive sweeteners or fat.</p>	<p>As schools are required to follow the state standard for sugar, exemptions are limited to fresh, frozen, canned, or dried fruits and vegetables. Canned fruits and vegetables must be packed in extra light syrup, light syrup or 100% juice.</p>

^{*} Components of the standards that are considered to be stronger than the USDA standards.

[†] Nutritive and non-nutritive sweeteners enhance the flavor and/or texture of food. Nutritive sweeteners provide the body with calories, whereas non-nutritive sweeteners are low in calories or contain none. They can be added to both food and beverages.

References

Federal Register, 2013, 7 CFR Parts 210 and 220, *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in Schools as Required by the Healthy, Hunger-Free Kids Act of 2010; Interim Final Rule*, U.S. Department of Agriculture, 78 (125) (June 28, 2013).

Federal Register, 2014, 7 CFR Parts 210 and 220, *Local School Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010: Proposed Rule*, U.S. Department of Agriculture, 79 (38) (February 26, 2014).

Kentucky Statutes, Statute 158.850 (2005), <http://www.lrc.ky.gov/Statutes/statute.aspx?id=3621>.

Kentucky Statutes, Statute 158.854 (2005), <http://www.lrc.ky.gov/Statutes/statute.aspx?id=3623>.

Kentucky State Board of Education (2005), "Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports," KAR 702 Section 6:090, <http://education.ky.gov/federal/SCN/Documents/KY%20Minimal%20Nutrition%20Standards%20for%20Foods%20and%20Beverages%20available%20on%20Public%20School%20Campuses%20During%20the%20School%20Day.pdf>.

Sue Nunn Bartenfield, Child Nutrition Program Manager, School and Community Nutrition, Kentucky Department of Education email message to author, Aug. 5, 2014.

**KIDS' SAFE &
HEALTHFUL
FOODS PROJECT**


Robert Wood Johnson
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CHARITABLE TRUSTS

Contact: Michelle Mendes, associate, communications **Email:** mmendes@pewtrusts.org **Project website:** healthyschoolfoodsnow.org

The Kids' Safe and Healthful Foods Project, a collaboration between The Pew Charitable Trusts and the Robert Wood Johnson Foundation, provides nonpartisan analysis and evidence-based recommendations to make sure that all foods and beverages sold in U.S. schools are safe and healthful.