

# Snack Foods and Beverages In West Virginia Schools

A comparison of state policy with USDA's nutrition standards

The policy for foods and beverages outside of the school meal programs has been developed through legislative rule by the West Virginia State Board of Education (Rule 126-86-1 to 16). However, state law defines exemptions for the beverage policy (Code 18-2-6a).

Policy Applications		
	USDA interim final rule	West Virginia standards <sup>1</sup>
<b>What is covered by the policy?</b>	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.	The policy applies to food and beverages sold, served, and/or distributed to students during the school day in elementary, middle, and high schools throughout the state.
<b>Does the policy address exemption?</b>	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.	West Virginia permits Local Wellness Policies to be more restrictive as long as they meet minimum state standards.
<b>Definition of "school day"</b>	The period from 12:01 a.m. until 30 minutes after the end of the instructional day.	<p>The period of time between the arrival of the first student at the school building and the end of the last instructional period.</p> <p>This policy does not apply to the extended school day, meaning after-school activities are not covered.</p> <p>In elementary school, no food or beverages shall be sold, served, or distributed to students, outside of the school nutrition programs, from the time the first child arrives at school until 20 minutes after all students are served lunch.</p> <p>When foods are sold, served, or distributed outside of the school day, the foods must include nutritious choices. They are defined as fruit, vegetables, plain water, 100% fruit or vegetable juices; nonfat and/or low-fat milk, cheese, yogurt; grain foods containing whole grain as the first listed ingredient; nuts and/or seeds.</p>

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

Policy Applications		
	USDA interim final rule	West Virginia standards
<b>Definition of "school campus"</b>	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 or county board of education property, including vending machines, school stores, school canteens, parties, and fundraisers.

Foods		
	USDA interim final rule	West Virginia standards
<b>General</b>	<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"> <li>• be a whole-grain product containing 50% or more whole grains by weight or have whole grains listed as the first ingredient, or</li> <li>• have as the first ingredient one of the non-grain major food groups: a fruit, vegetable, dairy product, protein food, or</li> <li>• be a combination food that contains at least ¼ cup of fruit and/or vegetable, or</li> <li>• 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).</li> </ul> <p>If water is the first ingredient, the second must be one of the food items above.</p>	<p>Consumption of fruits, vegetables, whole grains, and nonfat or low-fat dairy products is encouraged.</p> <p>Meals must be priced and served as a unit. No a la carte foods may be offered during meal periods at any grade level.'</p>
<b>Calories (per item as packaged or served)</b>	<p>≤ 200 calories for snacks and side dishes</p> <p>≤ 350 calories for entree items</p>	<p>≤ 200 calories per product/package for snacks</p>
<b>Total fat</b>	<p>≤ 35% of total calories</p>	<p>≤ 35% of total calories per product/package</p>
<b>Saturated fat</b>	<p>≤ 10% of total calories</p>	<p>≤ 10% of total calories</p>
<b>Trans fat</b>	<p>Zero grams</p>	<p>≤ 0.5 g per product/package</p>
<b>Sugar (per item as packaged or served)</b>	<p>≤ 35% of weight from total sugars in foods</p>	<p>≤ 35% of calories per product from total sugars</p>
<b>Sodium (per item as packaged or served)</b>	<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>	<p>≤ 200 mg sodium per product/package'</p>
<b>Other</b>	<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>	

Beverages		
	USDA interim final rule	West Virginia standards <sup>2</sup>
<b>General</b>	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.	<p>During the school day, in elementary, middle school, or junior high school, only healthy beverages may be sold in vending machines on the premises, in school canteens or through fundraisers by students, teachers, and groups or by any other means. Soft drinks may not be sold.</p> <p>The West Virginia Board of Education strongly recommends that at all grade levels, only water, 100% fruit and/or vegetable juice, and flavored or unflavored nonfat or 1% milk be sold, served, or distributed throughout the school day. West Virginia law allows county boards of education to permit the sale of soft drinks to students in high school, but according to the state Department of Education, no schools permit their sale.</p> <p>Only milk, nonfat or low-fat milkshakes, and bottled water may be sold as a la carte items during meal periods at any grade level.</p>
<b>Juice</b>		
<b>Elementary</b>	<p>100% fruit/vegetable juice ≤ 8 fl oz</p> <p>100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 8 fl oz</p>	<p>100% fruit/vegetable juice ≤ 4 fl oz<sup>2</sup></p> <p>20% juice drinks allowed by state code, but not included in the Department of Education legislative rule</p>
<b>Middle</b>	<p>100% fruit/vegetable juice ≤ 12 fl oz</p> <p>100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 12 fl oz</p>	<p>100% fruit/vegetable juice ≤ 8 fl oz<sup>2</sup></p> <p>20% juice drinks allowed by state code, but not included in the Department of Education legislative rule</p>
<b>High</b>	<p>100% fruit/vegetable juice ≤ 12 fl oz</p> <p>100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 12 fl oz</p>	<p>100% fruit/vegetable juice ≤ 8 fl oz<sup>2</sup></p> <p>20% juice drinks allowed by state code, but not included in the Department of Education legislative rule</p>
<b>Milk and milk alternatives</b>		
<b>Elementary</b>	<p>Low-fat milk, unflavored ≤ 8 fl oz</p> <p>Nonfat milk, plain or flavored ≤ 8 fl oz</p> <p>Nutritionally equivalent milk alternatives ≤ 8 fl oz</p>	<p>Nonfat and low-fat milk, flavored or unflavored</p> <p>Nonfat and low-fat milkshakes</p>
<b>Middle</b>	<p>Low-fat milk, unflavored ≤ 12 fl oz</p> <p>Nonfat milk, plain or flavored ≤ 12 fl oz</p> <p>Nutritionally equivalent milk alternatives ≤ 12 fl oz</p>	<p>Nonfat and low-fat milk, flavored or unflavored</p> <p>Nonfat and low-fat milkshakes</p>
<b>High</b>	<p>Low-fat milk, unflavored ≤ 12 fl oz</p> <p>Nonfat milk, plain or flavored ≤ 12 fl oz</p> <p>Nutritionally equivalent milk alternatives ≤ 12 fl oz</p>	<p>Nonfat and low-fat milk, flavored or unflavored</p> <p>Nonfat and low-fat milkshakes</p>

<sup>2</sup> Existing state code is described below. However, because the USDA Smart Snacks regulations will make the state code allowing soft drinks and 20% juice drinks null and void, the West Virginia Department of Education intends to update its rules to align with USDA beverage regulations and require 100% juice, water, and milk only.

Beverages		
	USDA interim final rule	West Virginia standards
<b>Water</b>		
<b>All grades</b>	<p>Potable water must be available at no charge during meal service where breakfast and lunches are served.</p> <p>There is no ounce restriction on plain water for sale (carbonated or noncarbonated).</p>	<p>Schools must make available plain, unflavored water throughout the school day at no charge. Safe drinking water must be offered with meals for child nutrition programs. Cups must be available with any water dispenser for easy student access.</p> <p>There is no ounce restriction on plain water offered for sale.</p>
<b>Other beverages</b>		
	<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 <math>\leq 5</math> calories per 8 fluid oz serving (or <math>\leq 10</math> calories per 20 fluid oz), in no more than 20 oz servings.</p> <p>Beverages <math>\leq 40</math> calories per 8 fluid oz serving (or <math>\leq 60</math> calories per 12 fluid oz serving) in no more than 12 oz servings are also allowed.</p>	<p>High schools that permit the sale of soft drinks through vending machines must ensure that 50% of the beverages offered for sale are healthy and that the machines are located near the vending machines containing soft drinks. Healthy beverages are defined as water, 100% fruit and vegetable juice, low-fat milk and other juice beverages with a minimum of 20% juice.'</p> <p>Seventy-five percent of the profits from the sale of healthy beverages and soft drinks shall be allocated by a majority vote of the faculty senate of each school, and 25 percent of the profits from the sale of healthy beverages and soft drinks shall be allocated to the purchase of supplies by the school principal.'</p>
<b>Caffeine</b>		
<b>Elementary</b>	Not allowed	Trace amounts of naturally occurring caffeine substances allowed. The sale, service, or distribution of coffee and coffee-based beverages is prohibited during the school day.
<b>Middle</b>	Not allowed	Trace amounts of naturally occurring caffeine substances allowed. The sale, service, or distribution of coffee and coffee-based beverages is prohibited during the school day.
<b>High</b>	Caffeinated beverages allowed	Trace amounts of naturally occurring caffeine substances allowed. The sale, service, or distribution of coffee and coffee-based beverages is prohibited during the school day.'
<b>Artificial sweeteners</b>		
	No standard	The sale, service, and distribution of non-nutritive/ artificial sweeteners are prohibited.'

Other		
	USDA interim final rule	West Virginia standards
<b>Fundraisers</b>	<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>	<p>On school premises, from the arrival of the first child at school until the departure of the last regularly scheduled school bus, all fundraising activities involving food and beverages must comply with the standards set forth in this policy. There are no restrictions on the sale or distribution of any food or beverage connected to fundraising activities that are intended for sale off the school grounds.</p>
<b>Class parties/school celebrations</b>	No standard	<p>Food and beverages shall not be offered as a reward or used as punishment or disciplinary action for a student during the school day. All food and beverages sold, served, or distributed outside the school meal programs must meet the requirements set forth in this policy.</p>
<b>Food marketing</b>	No standard included in the USDA Smart Snacks interim final rule; however, USDA's proposed rule on Local Wellness Policies addresses this component.	<p>County boards of education should minimize marketing of foods and beverages sold outside of the school meal program in high schools by locating food and beverage sales in areas with low student traffic. The exterior of vending machines should not depict commercial logos of products or suggest that the consumption of vended items conveys a health or social benefit.</p>
<b>Positive nutritional value</b>	No standard	No standard
<b>Nutrition labeling requirements</b>	No standard	No standard
<b>Local Wellness Policy</b>	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.	<p>A county-wide, board-approved Local Wellness Policy, or LWP, must be adopted according to federal guidelines and submitted biannually to the Department of Education's Office of Child Nutrition. Failure to submit the policy may result in suspension of federal reimbursements pending compliance with LWP requirements.</p>
<b>Other</b>		<p>Students shall be provided with a minimum time after being served the meal of 10 minutes at breakfast and 20 minutes at lunch. Activities may not be scheduled during meal service times that distract or limit participation in nutrition programs.</p> <p>All contracts must be approved and signed by the county board or county superintendent. Individual schools do not have the authority to enter into food and beverage contracts.</p>

Exemptions to food and beverage standards		
	USDA interim final rule	West Virginia standards
<b>General</b>		
<b>General exemptions</b>	<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>	
<b>Exemptions from total fat</b>	<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<sup>†</sup> sweetener or fat</p> <p>Seafood with no added fat</p> <p>Combination foods are not exempt and must meet all nutrient standards.</p>	<ul style="list-style-type: none"> <li>• Nuts, seeds</li> <li>• Cheese</li> </ul>
<b>Exemptions from saturated fat</b>	<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>	
<b>Exemptions from sugar (per item as packaged or served)</b>	<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>	<ul style="list-style-type: none"> <li>• Fruits</li> </ul>

<sup>\*</sup> Components of the standards that are considered to be stronger than the USDA standards.

<sup>†</sup> 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).

State of West Virginia, West Virginia Code 18-2-6a, accessed Aug. 1, 2014,  
<http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=18&art=2&section=6A#02>.

West Virginia State Board of Education (2002). Procedural Rule W. Va. CSR 126-85-121 "Policies of Operation Manual, Child Nutrition Programs (4320)," <http://wvde.state.wv.us/policies/p4320.pdf>.

West Virginia State Board of Education (2008). Legislative rule W. Va. CSR 126-86-5; W. Va. SCR 126-86-7; W. Va. CSR 126-86-9 "Standards for School Nutrition," <http://wvde.state.wv.us/policies/p4321.1.pdf>.

School Nutrition Association (2014). "Smart Snacks: State Agency Fundraising Exemptions,"  
[http://schoolnutrition.org/uploadedFiles/News\\_and\\_Publications/News/SmartSnacksFundraisingExemption.pdf](http://schoolnutrition.org/uploadedFiles/News_and_Publications/News/SmartSnacksFundraisingExemption.pdf).

**KIDS' SAFE &  
HEALTHFUL  
FOODS PROJECT**

  
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**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.