

# Snack Foods and Beverages In Delaware Schools

A comparison of state policy with USDA's nutrition standards

Delaware Statute Title 14, Section 4136 (2011) prohibits public schools and school districts from making food containing artificial trans-fats available to students in grades K-12 during school hours. Delaware Administrative Code 14.800, Section 852 (2004) requires food sold in addition to meals to promote healthful eating habits and exclude foods of minimal nutritional value, as defined by USDA. As of July 1, 2014, Delaware schools participating in federal meal programs are responsible for adhering to the U.S. Department of Agriculture's Smart Snacks in School nutrition standards. The Delaware Department of Education does not anticipate promulgating new regulations or updating statutes relative to school meals in the foreseeable future.

| Policy Applications                        |   |   |
|--|---|---|
|  | USDA interim final rule   | Delaware 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.   | This policy requires each school district in the state to establish a policy for food sold outside of meals.  |
| <b>Does the policy address preemption?</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. | This policy does not address preemption.  |
| <b>Definition of "school day"</b>          | The period from 12:01 a.m. until 30 minutes after the end of the instructional day.   | This policy does apply to the extended school day.<br><br>Restrictions on the sale of food and beverages containing artificial trans-fats apply during regular school hours and the extended school day. The extended school day includes activities such as clubs, yearbook, band and choir practice, student government, drama, and childcare/latchkey programs. The extended school day does not include school-based events in which parents, families, and the wider community constitute a significant portion of the attendees such as interscholastic sports, school plays and dramatic performances, or other similar school functions. <sup>1</sup> |
| <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 school grounds  |

<sup>1</sup> 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  | Delaware 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> | Foods sold outside of school meals must exclude foods of minimal nutritional value, or FMNV, such as water ices, chewing gum, and certain candies, and should promote healthy eating habits in children.   |
| <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>  | No state standard  |
| <b>Total fat</b>                                 | ≤ 35% of total calories  | No state standard  |
| <b>Saturated fat</b>                             | ≤ 10% of total calories  | No state standard  |
| <b>Trans fat</b>                                 | Zero grams   | Any food containing industrially produced trans fat is prohibited. This includes food containing vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to U.S. Food and Drug Administration standards, lists the trans-fat content as 0 grams per serving. |
| <b>Sugar (per item as packaged or served)</b>    | ≤ 35% of weight from total sugars in foods   | No state standard  |
| <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>  | No state standard  |
| <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  | Delaware standards   |
| <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. | Food sold outside of school meals must exclude FMNV, and should promote healthy eating habits in children. |
| <b>Juice</b>                      |  |  |
| <b>Elementary</b>                 | 100% fruit/vegetable juice ≤ 8 fl oz<br><br>100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 8 fl oz   | No state standard  |
| <b>Middle</b>                     | 100% fruit/vegetable juice ≤ 12 fl oz<br><br>100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 12 fl oz   | No state standard  |
| <b>High</b>                       | 100% fruit/vegetable juice ≤ 12 fl oz<br><br>100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners ≤ 12 fl oz   | No state standard  |
| <b>Milk and milk alternatives</b> |  |  |
| <b>Elementary</b>                 | Low-fat milk, unflavored ≤ 8 fl oz<br><br>Nonfat milk, plain or flavored ≤ 8 fl oz<br><br>Nutritionally equivalent milk alternatives ≤ 8 fl oz   | No state standard  |
| <b>Middle</b>                     | Low-fat milk, unflavored ≤ 12 fl oz<br><br>Nonfat milk, plain or flavored ≤ 12 fl oz<br><br>Nutritionally equivalent milk alternatives ≤ 12 fl oz  | No state standard  |
| <b>High</b>                       | Low-fat milk, unflavored ≤ 12 fl oz<br><br>Nonfat milk, plain or flavored ≤ 12 fl oz<br><br>Nutritionally equivalent milk alternatives ≤ 12 fl oz  | No state standard  |
| <b>Water</b>                      |  |  |
| <b>All grades</b>                 | Potable water must be available at no charge during meal service where breakfast and lunches are served.<br><br>There is no ounce restriction on plain water for sale (carbonated or noncarbonated).                                       | No state standard  |

| Beverages                    |   |                    |
|------------------------------|---|--------------------|
|                              | USDA interim final rule   | Delaware standards |
| <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> | No state standard  |
| <b>Caffeine</b>              |   |                    |
| <b>Elementary</b>            | Not allowed   | No state standard  |
| <b>Middle</b>                | Not allowed   | No state standard  |
| <b>High</b>                  | Caffeinated beverages allowed   | No state standard  |
| <b>Artificial sweeteners</b> |   |                    |
|                              | No standard   | No state standard  |

| Other                                    |   |  |
|--|---|--|
|  | USDA interim final rule   | Delaware 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> | As of July 1, 2014, all fundraisers must meet USDA's Smart Snacks interim final rule with no exemptions allowed. |
| <b>Class parties/school celebrations</b> | No standard   | No state standard  |
| <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.  | No state standard  |
| <b>Positive nutritional value</b>        | No standard   | No state standard  |
| <b>Nutrition labeling requirements</b>   | No standard   | No state 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.  | No state standard  |

| Exemptions to food and beverage standards                     |   |                    |
|---|---|--------------------|
|   | USDA interim final rule   | Delaware 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> | No state standard  |
| <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>  | No state standard  |
| <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>  | No state standard  |
| <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>  | No state standard  |

<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).

Delaware Statute (2011). Title 14, Section 4136,  
<http://delcode.delaware.gov/title14/c041/index.shtml>.

Delaware General Assembly (2004). Administrative Code 14:852,  
<http://regulations.delaware.gov/AdminCode/title14/800/852.shtml>.

**KIDS' SAFE &  
HEALTHFUL  
FOODS PROJECT**

  
Robert Wood Johnson  
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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.