

# Snack Foods and Beverages In New Mexico Schools

A comparison of state policy with USDA's nutrition standards

New Mexico Statute 22-13-13.1, enacted in 2005, required the development of rules governing the food and beverages sold in public schools to students. As a result NMAC 6.12.5 and 6.12.6 were adopted, and are enforced by the New Mexico Public Education Department. The Education Department is updating the Competitive Food Sales rule to align with the USDA Smart Snacks standards, as well to establish the upper limit on the number of exempt fundraisers that may occur per year in New Mexico public schools. A proposed rule was issued on July 15, 2014; this chart reflects that proposal.

Policy Applications		
	USDA interim final rule	New Mexico 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 applies to public and private schools in New Mexico participating in the U.S. Department of Agriculture's school meal programs.
<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.	No standard
<b>Definition of "school day"</b>	The period from 12:01 a.m. until 30 minutes after the end of the instructional day.	School hours refer to the period from 12:01 a.m. to one half-hour after the end of the instructional day. This policy does not apply to the extended school day, meaning after-school activities are not covered.
<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.	Standards for competitive foods and beverages sold to students apply to vending machines, a la carte sales, and fundraisers.

<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	New Mexico 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>Vending machine offerings:</p> <ul style="list-style-type: none"> <li>Elementary schools: No food products may be sold in vending machines to students'</li> <li>Middle and high schools: Nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit may be sold in vending machines at any time and are not subject to additional restrictions. Other items may be sold only after school hours.'</li> </ul> <p>A la carte offerings may be sold only during lunch and are subject to the following requirements:</p> <ul style="list-style-type: none"> <li>Nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit are not subject to additional standards.</li> <li>Other food items may be sold, but must meet the nutrition standards outlined below</li> </ul>
<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>Snack items/side dishes shall contain no more than 200 calories per container or per package or amount served</p> <p>Entree items shall contain no more than 350 calories per container or per package or amount served</p>
<b>Total fat</b>	≤ 35% of total calories	≤ 16 grams of fat per container or per package or amount served, of which no more than 2 grams come from saturated fat and trans fats combined'
<b>Saturated fat</b>	≤ 10% of total calories	≤ 2 grams of fat from saturated and trans fat combined per container, per package, or amount served'
<b>Trans fat</b>	Zero grams	≤ 2 grams of fat from saturated and trans fat combined per container, per package, or amount served
<b>Sugar (per item as packaged or served)</b>	≤ 35% of weight from total sugars in foods	≤ 30 grams of total sugar per package or amount served
<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>Snack items/side dishes shall contain no more than 200 mg of sodium per container or per package or amount served.'</p> <p>Entree items shall contain no more than 480 mg of sodium per container or per package or amount served</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	New Mexico 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.	<p>Vending machine offerings:</p> <ul style="list-style-type: none"> <li>Elementary school: Beverages sold in vending machines to students can be sold only after the last lunch period is completed.'</li> <li>Middle school: Beverages may be sold at any time, but must meet nutrition standards below</li> <li>High school: Beverages sold to students may include only fat-free (unflavored or flavored) and unflavored low-fat milk, soy milk, water, and 100 percent fruit juice as specified below. Other beverages are available only after the completion of the last lunch period.'</li> </ul> <p>A la carte beverages may be sold only during the breakfast and lunch periods and are subject to the nutrition standards below. Carbonated beverages or soft drinks, noncarbonated water, and sports drinks are not allowed to be sold as a la carte items.'</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>	Not allowed in vending machines or a la carte'
<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>	100% fruit juice, no added sweeteners, ≤ 12 fl oz, and ≤ 125 calories per container'
<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>	100% fruit juice, no added sweeteners, ≤ 12 fl oz
<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>	Fat-free (unflavored and flavored), and unflavored low-fat milk not to exceed 8 ounces; soy milk
<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>	Fat-free (unflavored or flavored) and unflavored low-fat milk not to exceed 12 ounces; soy milk
<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>	Fat-free (unflavored or flavored) and unflavored low-fat milk not to exceed 12 ounces; soy milk
<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>	Allowed in vending machines and sold a la carte at all grade levels

Beverages		
	USDA interim final rule	New Mexico 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>	<p>Other beverages allowed only in high school vending after the last lunch period:</p> <ul style="list-style-type: none"> <li>calorie-free, flavored or unflavored carbonated water not to exceed 20 ounces;</li> <li>calorie-free, noncarbonated flavored water with no added sweeteners not to exceed 20 ounces; and</li> <li>sports drinks that do not exceed 5 calories per serving and do not exceed 20 ounces.</li> </ul>
<b>Caffeine</b>		
<b>Elementary</b>	Not allowed	Not allowed
<b>Middle</b>	Not allowed	Not allowed
<b>High</b>	Caffeinated beverages allowed	Allowed
<b>Artificial sweeteners</b>		
	No standard	Allowed in high schools

Other		
	USDA interim final rule	New Mexico 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>A fundraiser is defined as an activity during which currency, tokens, tickets or other items of value are exchanged for the sale or purchase of a product in support of a school or school-related activity.</p> <p>A fundraiser that does not follow the restrictions of this competitive foods rule may be held during school hours one time per semester or trimester at the discretion of the principal or charter school director.</p> <p>A fundraiser may be held after school hours provided that at least 50 percent of the offerings meet the following requirements:</p> <ul style="list-style-type: none"> <li>• Beverages: fat-free (unflavored or flavored) and unflavored low-fat milk; soy milk, water, and juice that is at least 50 percent fruit and that has no added sweeteners and a serving size not to exceed 12 ounces.</li> <li>• Food products: nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit may be sold and are not subject to restrictions. Other food products shall contain no more than 200 calories per container or per package or amount served, and shall contain no more than 8 grams of fat per container or per package or amount served with no more than 2 grams of fat from saturated and trans fats, and shall contain no more than 15 grams of sugar per container or per package or amount served.</li> </ul>
<b>Class parties/school celebrations</b>	No standard	No 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 standard
<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.	Each school district and charter school must develop and implement a wellness policy, which includes nutrition guidelines for a la carte offerings and school-sponsored fundraisers.

Exemptions to food and beverage standards		
	USDA interim final rule	New Mexico 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>	In middle and high schools, nuts, seeds, cheese, yogurt with less than 30 percent sugar per amount served, and fruit may be sold in vending machines or a la carte at any time and are not subject to additional restrictions.
<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>	
<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>	

<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 New Mexico (2010). New Mexico Statute 22-13-13.1,  
[http://www.lawserver.com/law/state/new-mexico/nm-statutes/new\\_mexico\\_statutes\\_22-13-13-1](http://www.lawserver.com/law/state/new-mexico/nm-statutes/new_mexico_statutes_22-13-13-1).

State of New Mexico (2014). New Mexico Administrative Code 6.12.5,  
<http://ped.state.nm.us/nutrition/2014/final%20competitive%20foods%20rule%208-15-14.pdf>.

State of New Mexico (amended 2007). New Mexico Administrative Code 6.12.6,  
<http://www.nmcpr.state.nm.us/NMAC/parts/title06/06.012.0006.htm>

**KIDS' SAFE &  
HEALTHFUL  
FOODS PROJECT**

  
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**Contact:** Michelle Mendes, associate, communications    **Email:** [mmendes@pewtrusts.org](mailto:mmendes@pewtrusts.org)    **Project website:** [healthyschoolfoodsnow.org](http://healthyschoolfoodsnow.org)

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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.