



PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | June St. Clair Atkinson, Ed.D., *State Superintendent*

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June 30, 2014

MEMORANDUM

TO: Superintendents, Finance Officers and School Nutrition Administrators

FROM: Lynn Harvey, Ed.D., RDN, LDN, FAND, SNS
Chief, School Nutrition Services

SUBJECT: Smart Snacks Nutrition Standards for All Foods Sold to Students

In December, 2010, Congress passed the *Healthy, Hunger-Free Kids Act (HHFKA)* which has continued to transform school nutrition programs in North Carolina and throughout the nation. One of the provisions of the Act authorized the Secretary of Agriculture to establish nutrition standards for **all foods and beverages sold to students on the school campus (or any extension of the school campus) during the instructional day**. The purpose of this communication is to inform Local Education Agency (LEA) officials of the changes required as a result of the new standards and to describe how these standards may impact activities on school campuses.

In January, 2012, the US Department of Agriculture (USDA) issued a final rule which defined the nutrition standards for meals served in the school breakfast, lunch and snack programs. As you are aware, school nutrition programs have undergone significant changes in the kinds and amounts of foods offered to students. Consistent with the HHFKA, school meals are required to meet nutrition standards that meet and/or exceed the recommendations of the Dietary Guidelines for Americans.

In June, 2013, the USDA issued an Interim Final Rule, entitled *Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010* and dubbed the "Smart Snacks Rule," which defined nutrition standards for **all** foods and beverages sold to students during the instructional day. The Interim Final Rule is available for downloading at <http://www.gpo.gov/fdsys/pkg/FR-2013-06-28/pdf/2013-15249.pdf>. The rule defines the instructional day as "12:01 AM until 30 minutes after the bell rings signaling the end of the school day." This rule applies to *a la carte* items served in the school nutrition program as

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well as foods and beverages sold in vending machines, school stores, fund-raisers and other venues on the school campus during the instructional day. While the USDA has not issued a Final Rule, State Education Agencies have been instructed to proceed to implement the Interim Final Rule. Effective July 1, 2014, the new “Smart Snacks nutrition standards” will extend to all areas of the school campus during the instructional day. These nutrition standards establish limits on portion sizes and the nutritional content of foods and beverages, including limitations on calories, fat, sodium and sugar. Nutrition standards are the same for students in all grades. As part of the Smart Snacks nutrition standards, schools will be encouraged to offer and students will be encouraged to select more healthful options including more fruits, vegetables and whole grain rich products.

It is important to note the Smart Snacks nutrition standards **do not apply** to foods and beverages sold to adults nor do they apply to foods and beverages sold in the evening and weekend extracurricular activities or activities that take place off campus. These standards do not apply to foods and beverages that students bring from home as part of a bag lunch. Specific guidance has been issued to School Nutrition Administrators regarding the nutrition standards required for *a’ la carte* or supplemental food and beverage sales in the school nutrition programs to be compliant with the Smart Snacks nutrition standards.

While the US Department of Agriculture has issued specific guidance for implementing the Smart Snacks nutrition standards, the guidance must be modified in North Carolina to reflect the current State Board of Education (SBE) policy on competitive food and beverage sales (Policy TCS-S-000) and NC General Statutes governing the sale of foods and beverages to students. The current SBE policy prohibits the sale of foods and beverages to students on the school campus in competition with the school nutrition program from 12:01 AM until the school cafeteria closes for the day. General Statute (GS 115C-264) prohibits vending machines and the vending of foods and beverages to students outside the school nutrition program in elementary schools. North Carolina will continue to adhere to the SBE policy and State statute while incorporating the requirements of the Smart Snacks nutrition standards for the portion of the instructional day that is not addressed by the SBE policy. **The portion of the instructional day that is not addressed in the SBE policy but is impacted by the Smart Snacks nutrition standards is the period of time between the closure of the school cafeteria for the day until 30 minutes after the dismissal bell rings.**

In order to ensure compliance with both the SBE Policy on competitive food and beverage sales, State statute and the Smart Snacks nutrition standards, each LEA will be required to declare one of four options (or a combination of options) to be implemented in the coming year to meet the nutrition standards for all foods and beverages sold **from the time of day the cafeteria closes through 30 minutes after the dismissal bell rings.** Compliance with the State Board Policy and one of the options listed on the next page, or a combination of options if adequately documented, will enable the State to comply with the Interim Final Rule, and by extension, to continue to receive Federal funds to operate the school nutrition programs. Please remember these options only apply from the time the cafeteria closes for the day until 30 minutes after the bell rings signaling the end of the instructional day.

- Option 1:** The LEA may extend the existing SBE Policy from 12:01 AM through 30 minutes after the dismissal bell rings. Under this option, the LEA is prohibited from selling foods and beverages to students in competition with the school nutrition program until 30 minutes after the dismissal bell rings.
- Option 2:** The LEA may turn all vending sales, their profits and the responsibility to sell products that meet the Smart Snacks nutrition standards over to the school nutrition department to ensure all foods and beverages sold on campus are sold only through the school nutrition program and comply with the Smart Snacks nutrition standards. Foods and beverages that meet the Smart Snacks requirements would be available through vending machines to students throughout the instructional day in locations to be determined by the LEA. Under this option, school nutrition personnel would be responsible for compliance with Federal regulations and for providing required documentation during an Administrative Review or audit. LEAs would be permitted to sell foods and beverages to students 30 minutes after the dismissal bell rings.
- Option 3:** The LEA may purchase foods and beverages that meet the “Smart Snacks” standards from the school nutrition department; simultaneously, the LEA may also purchase the expertise and administrative services of the school nutrition department to determine which products meet the standards. The LEA may also purchase the services of the school nutrition department to maintain all required documentation (including but not limited to procurement specifications, bid awards, contracts, nutrition facts labels, allergen labels and ingredient lists) indicating all foods and beverages sold to students in any location on the school campus including vending machines, school stores and other sales venues outside the school nutrition department meet the Smart Snacks nutrition standards. Under this option, School Nutrition Personnel will provide documentation to the LEA for use during an Administrative Review or Audit. The LEA will ultimately be responsible for demonstrating compliance with the Smart Snacks Rule. Consistent with SBE policy, under this option, foods and beverages may not be sold in competition with the school nutrition program from 12:01 AM until after the cafeteria closes for the day.
- Option 4:** The LEA will be responsible for purchasing all items to be sold to students outside the school nutrition program and will be responsible for determining whether the products sold in school-owned vending machines, school stores, and other venues anywhere on the school campus comply with the Smart Snacks nutrition standards. LEA personnel will be responsible and accountable for obtaining and maintaining documentation for all purchases (including but not limited to procurement specifications, bid awards, contracts, nutrition facts labels, allergen labels and ingredient lists) for each school within the LEA. Under this

option, LEA personnel outside the school nutrition program will be responsible for compliance during an Administrative Review or audit. Consistent with SBE policy, under this option, foods and beverages may not be sold in competition with the school nutrition program from 12:01 AM until after the cafeteria closes for the day.

A chart comparing the Smart Snacks Options is attached for your convenience.

The following guidance is provided for unique situations that may occur on the school campus.

Combination of Options

If adequate documentation is provided, an LEA may implement a combination of two of the four options provided. For example an LEA with an existing vendor contract for beverages may choose to purchase beverages under the existing contract while simultaneously purchasing approved snack products from the school nutrition department, thus combining Options 2 and 4. Please discuss this option with the School Nutrition Services section prior to choosing a combination of available options to ensure the feasibility of the combined options.

Fund-Raising Activities

Please remember that in compliance with the SBE policy on competitive foods and beverages, fund-raising activities that involve the sale of foods and/or beverages to students may not occur from 12:01 AM until the cafeteria closes for the day. Tokens of exchange for foods or beverages to be delivered later in the day are prohibited during this time period. If foods and/or beverages are sold as fund-raisers from the time the cafeteria closes for the day through 30 minutes after the dismissal bell rings, they must comply with the Smart Snacks nutrition standards. Fund-raisers that are conducted outside the protected time period of 12:01 AM through 30 minutes after the dismissal bell rings, are not required to comply with Smart Snacks nutrition standards, but are subject to the requirements of the LEA's local wellness policy.

Culinary Programs

Under the current SBE policy, academic culinary programs that prepare foods and beverages as part of the curriculum may not sell these items to students from 12:01 AM until after the cafeteria closes for the day. Foods or beverages prepared by the culinary class may be sold to adults at any time as long as the sale of such foods and/or beverages are approved by the local board of education. Items prepared as part of the curriculum may be offered to students for taste testing or evaluation as part of the instructional experience.

Foods and/or beverages prepared by the culinary class may be sold to students after the cafeteria closes for the day. Foods and/or beverages sold to students from the time the cafeteria closes for the day until 30 minutes after the dismissal bell rings are required to comply with the Smart Snacks nutrition standards. Foods and/or beverages prepared by the culinary class and sold to students thirty minutes after the dismissal bell rings, in the evenings and on weekends are not required to meet the Smart Snacks nutrition standards.

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We understand the complexities associated with synthesizing Federal rules, State statutes and SBE policy to arrive at a final procedure that will apply to schools in North Carolina. We anticipate many questions about these new procedures which will remain in place for the duration of the 2014 – 2015 school year in anticipation of a final rule from the USDA. As questions are received, our section will respond and will compile the Questions/Answers into a document that will be distributed to LEA officials for future reference. The School Nutrition Services Section is eager to provide technical assistance and training for LEA personnel to support in implementation of the Smart Snacks nutrition standards in the coming year; staff will be available to provide consultation and training via webinars and conference calls upon request. If you have questions about this memorandum or the options available to LEAs for the coming year, please send them to me at lynn.harvey@dpi.nc.gov.

To provide adequate time to review and subsequently declare an LEA-specific option, the Smart Snacks Option Declaration Form included with the Annual Agreement Renewal Package will not be due until September 17, 2014.

Thank you in advance for your patience as we work through the new Smart Snacks procedures together.

Attachments

School Nutrition Program Smart Snacks Options*

The following chart has been prepared to assist LEAs in selecting the best option for implementing the new USDA Federal standards for Smart Snacks. Effective July 1, 2014 all LEAs that sell foods and/or beverages outside of the normal breakfast or lunch meal times will be expected to meet certain guidelines in order to comply with Federal and State laws. Please refer to the chart and the examples that follow as you prepare your 2014 – 2015 School Nutrition Program (SNP) Annual Agreement. For questions or clarification, please contact your School Nutrition Services Regional Consultants.

Option	Description	Time Foods/Beverages May Be Sold By The LEA To Students	Foods/Beverages Sold Meet Smart Snacks Nutrition Standards	Responsibility for Compliance (including all nutrition facts, ingredient labels and other documentation)	Revenues From the Sale of Smart Snacks Accrue To
1	LEA extends existing SBE Policy from 12:01 AM through 30 minutes after the dismissal bell rings	Foods and/or beverages may not be sold to students by the LEA prior to 30 minutes after the dismissal bell rings	N/A	LEA is responsible to inform staff and enforce compliance	N/A
2	LEA delegates responsibility for all food and/or beverage vending to the SNP	Foods/Beverages may be sold only by the SNP any time during the day. There would be no food and/or beverage sales by the LEA until 30 minutes after the dismissal bell -- See Option 1.	Yes	SNP	SNP
3	LEA purchases foods and/or beverages from the SNP that meet Smart Snacks nutrition standards and purchases SNP technical expertise and administrative services)	After the cafeteria closes for the day until 30 minutes after the dismissal bell.	Yes	LEA is responsible for overall compliance; SNP is responsible for documentation of compliance with Smart Snacks nutrition standards	LEA
4	LEA purchases foods and/or beverages that meet Smart Snacks nutrition standards and maintains all documentation	After the cafeteria closes for the day through 30 minutes after the dismissal bell.	Yes	LEA	LEA

*NC General Statute prohibits vending in elementary schools. Compliance with Smart Snacks nutrition standards is not required for sales occurring 30 minutes after dismissal bell.

Examples of how the LEA may implement the various options in order to comply with the Smart Snacks standards and NC's policies governing the time of day foods and/or beverages may be sold by the LEA to students

Option 1

Example: School dismisses at 3:00 PM. Food and/or beverage sales by the LEA from vending machines, school stores, fund-raisers, etc. could begin at 3:30 PM. Items would not have to meet the Smart Snack nutrition standards. Revenues from the sale of these items would accrue to the LEA.

Option 2

Example: The LEA negotiates with the School Nutrition Department to assume responsibility for all vending on campus during the instructional day (12:01 AM through 30 minutes after the dismissal bell rings). Vending that meets the Smart Snacks nutrition standards is available to students during the instructional day and revenues from the sale of these items accrue to the School Nutrition Program. Details of the vending arrangement are negotiated between the Superintendent (or designee) and the School Nutrition Administrator. Smart Snacks nutrition standards do not apply to foods and beverages sold in school-owned vending machines and in other venues when these items are sold 30 minutes after the dismissal bell, in the evenings and on weekends.

Option 3

Example: The cafeteria closes at 1:30 PM. Food and/or beverage sales from vending machines, school stores, fund-raisers, etc. may begin at 1:31 PM and continue until 30 minutes after the dismissal bell rings. All items sold to students for vending purposes would be purchased from the School Nutrition Department and meet must the Smart Snack nutrition standards. In addition to purchasing foods and beverages from the School Nutrition Department, the LEA would purchase the administrative services to determine which foods/beverages meet the standards, competitively procure the products, and maintain all documentation required for the LEA for Administrative Reviews and other audits. Revenues for items sold during this time period would accrue to the LEA.

Option 4

Example: The cafeteria closes at 1:30 PM. Food and/or beverage sales from vending machines, school stores, fund-raisers, etc. may begin at 1:31 PM and continue until 30 minutes after the bell rings. All Items sold to students must meet the Smart Snack nutrition standards. Revenues would accrue to the LEA during this time period. The LEA would be responsible for purchasing the foods/beverages sold to students and for maintaining documentation that the items meet the Smart Snacks nutrition standards. The LEA would be responsible to produce documentation (written policies or procedures, procurement records, nutrition facts labels, compliance calculators, etc.) of compliance during an Administrative Review or other audit.