

## Contraband cupcakes: USDA's new rules for school food

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**By the New York State Association of School Attorneys**

About 17 percent of children between the ages of two and 19 are obese, according to the Centers for Disease Control and Prevention. To combat this alarming statistic, the U.S. Department of Agriculture (USDA) has enacted the "Smart Snacks in School Rules," which took effect on July 1.

Any school that receives funding under the National School Lunch Program and the School Breakfast Program is required to comply with the new nutrition standards in the 2014-15 school year – that's about 90 percent of the schools in New York State, according to the State Education Department (SED).

The Smart Snacks in School Rules represent a regulatory attempt to improve the overall nutrition environment in schools by addressing foods sold throughout the school day, consistent with the Healthy, Hunger-Free Kids Act of 2010.

Prior to the new standards, the federal government only regulated food that was sold during breakfast or lunch. The new standards apply to all food and beverages sold on a school's campus. That includes items in school stores, snack bars, vending machines or a la carte in the cafeteria or during a fundraiser.

The new standards only apply to food sold during the "school day," which is defined as "the period from midnight before to 30 minutes after the end of the official school day."

Many typical snacks such as candy bars and cupcakes would not meet the restrictions on ingredients or limitations on the amount of sugar, fat and sodium or number of calories a product may contain. The nutrition standards require that a food item contain whole grains, dairy, protein, fruit, vegetables, or another naturally occurring nutrient, such as calcium or vitamin D.

For example, a blueberry muffin still may be sold at a bake sale if the first ingredient listed is whole grain and it does not exceed any of the limitations on calories, fat, sugar, and sodium (See <http://goo.gl/E6bG8l>). A muffin that lacked whole grains could still meet the standards if it contained at least one quarter cup of blueberries.

Tools are available to help determine if a given product meets the guidelines, based on its nutrition label. The American Heart Association collaborated with the Clinton Foundation to develop a calculator, which is available on the Alliance for a Healthier Generation website.

States have the authority to adopt more stringent standards and the authority to exempt a limited number of school fundraisers from the nutrition standards. However, the New York State Education Department has yet to exercise such authority.

Complying with the Smart Snacks in School Rules will require affirmative steps in many school districts. The first steps would be to take an inventory of every place where food and beverages are sold on campus and educate those responsible for selling food about the new rules. This includes administrators, staff, and student-run groups, as well as any vendors with whom the school contracts.

It is our understanding that the USDA will provide technical assistance and training to ease the transition into the new rules. Workshops and training programs will be announced by the State Education Department's Child Nutrition Knowledge Center.

One consideration is the effect, if any, these regulations have on events such as classroom birthday celebrations or pizza parties. Notably, the standards only apply to food sold at school. Thus, students still may bring in any food they want for either their own consumption, or to share with others, free of charge with the exception of individual school policy limitations. However, school personnel should be cautious that celebrations do not meet the definition of a fundraiser. The USDA considers a fundraiser "an event that includes any activity during which currency/tokens/tickets etc... are exchanged for the sale/purchase of a product in support of the school or school-related activities." Therefore, simply suggesting that someone make a donation to a school-related activity or charitable cause may turn the activity into a fundraiser, thus subjecting it to the new standards.

Student groups that wish to hold bake sales or sell other foods as a school-sanctioned fundraiser can still do so under the new rules, even if the items sold do not meet the nutritional guidelines. One option is to hold events after school or the weekend, because as stated above, the Smart Snack standards only apply to food sold during the "school day." If students prefer to sell items during the school day, the products must meet the federal guidelines.

Districts may be concerned about loss of revenue from vending machines, as items typically sold in vending machines do not meet the nutritional guidelines. Vending machines with such fare should be turned off during the school day, but can be turned on 30 minutes after the school day concludes. Machines can be put on a switch or a timer.

Notably, the standards do not apply to food that is intended to be consumed outside of school. Therefore, items like cookie dough can be

sold around Christmas time for students to bring home for holiday cookies. And, of course, the rules do not affect other fundraising activities such as sports tournaments, a race/walk, a book sale, or school talent shows and dances.

It is not yet clear what the range of penalties will be for noncompliance. The USDA has expressed that it sees training as the first approach, but for more egregious cases of noncompliance, fines will be imposed. As for the extent of the fines, the USDA will address the topic in a forthcoming proposed rule. SED has also yet to opine on the penalties that may be imposed by the federal or state government.

As the new school year begins, educational institutions must act diligently to become acquainted with the new rules and develop ideas to ease any possible financial consequences. More information is available on USDA's website at <http://www.fns.usda.gov/school-meals/smart-snacks-school>.

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