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# SMART SNACKS FUNDRAISER EXEMPTION STATE POLICIES

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## Quarterly Report Updated December 1, 2016

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## Smart Snacks Fundraiser Exemptions

On June 28, 2013, the United States Department of Agriculture issued an interim final rule establishing nutrition standards for all foods sold in schools.<sup>1</sup> With an implementation date of July 1, 2014, “Smart Snacks” sets nutrition standards for all foods and beverages sold on the school campus during the school day, including those sold through school fundraisers. However, under both the interim and now final rule,<sup>2</sup> states are allowed to establish exemptions for infrequent school-sponsored fundraisers. Exempt fundraisers may not be sold in competition with school meals in the food service area during meal service, and may not occur more frequently than specified by the State agency.

The chart that follows shows that most states have chosen to implement their approved number of exemptions through methods beyond those of codified statutes and regulations. As a result, collection of policies involved a two-step process: 1) searching state databases available through commercial legal research service providers, LexisNexis and Westlaw, for policies adopted in codified statutes and regulations; and 2) searching states’ Department of Education and Child Nutrition Program websites. In addition, secondary sources were consulted from the School Nutrition Association<sup>3</sup> (last updated March 27, 2015) and Pew’s State Data Tables (compiled January 2015).<sup>4</sup>

The information listed here is current with laws available on LexisNexis and Westlaw as of December 1, 2016 as well as with websites and accompanying documents available as of the same date. Effective dates are included in the table below in order to more easily identify recent changes to policies. The sources where fundraiser exemptions were found are separated into 4 categories:

- 1) Law—includes codified statutes and administrative regulations
- 2) Policy—includes state-level memos and board policies
- 3) Guidance Document—includes PowerPoint presentations, handouts, newsletters, and other forms of technical assistance
- 4) Website—includes information posted directly on the Department of Education or Child Nutrition Program website

Under “Smart Snacks,” if a state does not adopt a policy on exemptions, it is considered to have a policy of zero exemptions allowed. However, in the information below, states that have adopted policies explicitly stating zero exemptions are allowed are separated from those states that have not yet adopted a policy. In addition, states that have adopted policies specifically requiring that all foods and beverages sold through fundraisers meet Smart Snack standards, without going on to allow any exemptions, are considered to have a policy that allows zero exemptions (see MD, MT).

Policies below were analyzed for any attempt to provide for fundraiser exemptions during the school day. **There were no substantive changes since the last quarterly report.** Four states have not established a policy on exempt fundraisers, 21 states have a policy allowing 0 exemptions, 20 states have a policy that regulates the number of exempt fundraisers, 5 states have a policy that regulates the number of exempt fundraising days, and 1 state regulates the number of school events at which any food or beverages can be sold.<sup>5</sup>

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<sup>1</sup> US Dept. of Agriculture, Food and Nutrition Service. National School Lunch Program and School Breakfast Program: Nutrition standards for all foods sold in school as required by the Healthy, Hunger-Free Kids Act of 2010: Interim final rule. Fed Regist 2013; 78:39068—39120. Available at [www.gpo.gov/fdsys/pkg/FR-2013-06-28/pdf/2013-15249.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-06-28/pdf/2013-15249.pdf) Last accessed Dec. 1, 2016.

<sup>2</sup> US Dept. of Agriculture, Food and Nutrition Service. National School Lunch Program and School Breakfast Program: Nutrition standards for all foods sold in school as required by the Healthy, Hunger-Free Kids Act of 2010: Final rule. Fed Regist 2016; 81:50132—50151. Available at <https://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17227.pdf> Last accessed Dec. 1, 2016.

<sup>3</sup> School Nutrition Association. Smart snacks: State agency fundraising exemption. 2014. Available at [https://schoolnutrition.org/uploadedFiles/Legislation\\_and\\_Policy/State\\_and\\_Local\\_Legislation\\_and\\_Regulations/SmartSnacksFundraisingExemption.pdf](https://schoolnutrition.org/uploadedFiles/Legislation_and_Policy/State_and_Local_Legislation_and_Regulations/SmartSnacksFundraisingExemption.pdf) Last accessed Dec. 1, 2016.

<sup>4</sup> The Pew Charitable Trusts. State and national school snack policies: how they compare. Available at <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/01/state-and-national-school-snack-policies> Last accessed Dec. 1, 2016.

<sup>5</sup> Specifics relating to types of fundraisers or specific events at which non-compliant food and beverages may be sold were not seen outside of this one policy. However, if a policy allows fundraisers per school group or organization, it will be noted below.

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

## Smart Snacks Fundraiser Exemptions in each State as of December 1, 2016

State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
AK	NS <sup>7</sup>	Elementary and Middle School: 10 days  High School: 25 days	<ul style="list-style-type: none"> <li>• Must apply for waiver</li> <li>• Waiver cannot be applied to vending machines</li> <li>• Foods under waiver may not be sold during meal service times, or 30 minutes before or after meal service in the meal service area</li> <li>• Must be in compliance with USDA school wellness policy requirements</li> </ul>	NS	<a href="#">Guidance Document</a>	School Year 2015-2016
AL	30	1 day	<ul style="list-style-type: none"> <li>• May not be sold as a la carte item, in vending machines, in school stores, or before school on school campus</li> <li>• May not be sold one hour before and after meals periods</li> </ul>	NS	<a href="#">Policy; Guidance Document</a>	Policy: July 1, 2015  Guidance Document: September 2, 2015

<sup>6</sup> Per school year unless otherwise stated.

<sup>7</sup> NS=not specified.

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
AR	9 “events” <sup>8</sup>	NS	May not be given during meal times in the areas where school meals are being served or consumed	All food and beverage items sold by school administrators or school non-licensed or licensed staff, students or student groups, parents or parent groups, or any other person, company or organization directly associated with the school programs	Law: 005 01 Code Ark. Rules & Regs. 008 <sup>9</sup>	September 17, 2005
AZ	ALL exemption requests for fundraisers by LEAs will be approved by the Arizona Department of Education <sup>10</sup>	1 week	NS	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	Law: Ariz. Rev. Stat. § 15-242; <a href="#">Policy</a>	Law: July 1, 2015 Policy: March 30, 2015
CA	0 <sup>11</sup>	NA <sup>12</sup>	NA	NS	Law: 5 Cal. Code Regs. 15575; <sup>13</sup> <a href="#">Policy</a> ; <a href="#">Website</a>	Law: September 3, 2008 Policy: August 2014 Website: Not dated

<sup>8</sup> Events are defined as field day, holiday, school recognition activity, end of school event, festival, fundraiser, or other event.

Arkansas Department of Education. Smart Snacks and Arkansas nutrition standards/maximum portion size list for school year 2015-16. 2015. Available at <http://adecm.arkansas.gov/ViewApprovedMemo.aspx?Id=1522>. The newest memo continues the allowance for nine special event days. Arkansas Department of Education. Smart Snacks in Arkansas Schools: Providing, Selling, and “9 Special Event Days. 2016. Available at <http://adecm.arkansas.gov/ViewApprovedMemo.aspx?Id=1957> Last accessed December 1, 2016.

<sup>9</sup> 005 01 Code Ark. Rules & Regs. 008 instituted the allowance for 9 “events” prior to the adoption of the Smart Snacks interim final rule. In May 2016, a new version of the regulation was passed that included updated Smart Snacks requirements and kept this exemption for 9 events intact.

<sup>10</sup> The Arizona Department of Education will track the number of exemptions granted and only take action to alter the policy if one or more LEAs abuse the policy.

<sup>11</sup> Note that California also goes on to limit the number of approved fundraisers that meet nutrition standards to four per school year in elementary schools. 5 Cal. Code Regs. 15500. In junior high and high schools, only one organization is allowed to sell foods and beverages that meet the standards each day, except on four days during which multiple organizations may sell items meeting the standards. 5 Cal. Code Regs. 15501.

<sup>12</sup> NA=not applicable.

<sup>13</sup> 5 Cal. Code Regs. 15575 was in place prior to the adoption of the Smart Snacks interim final rule.

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
CO	3	To be determined by LEAs	May not be sold during meal service, and for a period beginning ½ hour prior to and until ½ hour after each meal service <sup>14</sup>	NS	<a href="#">Policy</a>	June 5, 2014
CT	0	NA	NA	Any activities during which money or its equivalent (such as tickets, coupons, tokens and similar items) is exchanged for the purchase of a product in support of the school or school-related activities <sup>15</sup>	<a href="#">Policy</a> <sup>16</sup>	July 1, 2014
DC	0	NA	NA	NS	Law: DC Stat. § 38-822.06; <a href="#">Policy</a> <sup>17</sup>	Law: July 23, 2010 Policy: December 2014
DE	0	NA	NA	NS	<a href="#">Guidance Document</a>	July 1, 2014

<sup>14</sup> This additional restriction was added when the fundraiser exemption policy was restated in an April 2015 [policy statement](#). That policy will remain in place until the Smart Snacks final rule is published. Colorado Department of Education. Colorado Policy on Exempt Fundraisers. 2015. Available at <https://www.cde.state.co.us/nutrition/smartsnackscolopolicyexemptfundraisers> Last accessed December 1, 2016.

<sup>15</sup> Connecticut State Department of Education. Guide to competitive foods in schools. 2015. Available at <http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Nutrition/CF/CFG.pdf> Last accessed December 1, 2016.

<sup>16</sup> This policy applies only to those schools that do not participate in Connecticut Healthy Food Certification. Schools that do participate are required to follow Smart Snacks at all times during the school day.

<sup>17</sup> State law as well as the DC Local Wellness Policy requires that fundraisers meet USDA Smart Snacks requirements as well as the HealthierUS School Challenge Gold Level. Gold level was revised in August 2014 and states “the school only permits food-related fundraisers that meet USDA’s Smart Snack standards, even if the State allows exemptions.”

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
FL	NS	Elementary School: 5 days of fundraisers  Middle School: 10 days of fundraisers  High School: 15 days of fundraisers  Combination School: 10 days of fundraisers	Not allowed until 30 minutes after the conclusion of the last designated meal service period	Any event or activity occurring on the school campus during which currency, tokens, tickets, or the like are exchanged for the sale or purchase of items or services to benefit the school, a school organization or group, or a charitable organization, and which is authorized according to district board policy and has been approved by the principal or designee	Law: 5P-1.003 FL Admin. Code	September 24, 2014
GA	30 (board will consider applications for additional exemptions on a case by case basis)	3 days	• Cannot operate anywhere on school campus 30 minutes before until 30 minutes after the end of breakfast and lunch meal services  • Cannot be in vending machines, school stores, snack bars, or a la carte line	An event or activity during which students exchange currency/tokens/ tickets, etc., for the sale/purchase of a product in support of the school or school-related activities	<a href="#">Guidance Document; Website</a>	September 10, 2014 <sup>18</sup>
HI	0	NA	NA	NS	<a href="#">Website</a>	Not dated
IA	0	NA	NA	The sale of foods or beverages on school property targeted primarily to PK-12 students by or through other PK-12 students, student groups, school organizations, or on-campus school stores <sup>19</sup>	<a href="#">Guidance Document; Website</a>	Not dated

<sup>18</sup> An August 2016 [guidance document](#) restates these same requirements.

<sup>19</sup> Definitions. 281 Iowa Admin. Code 58.9 (effective July 1, 2010).

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
ID	10 (LEAs can request approval for additional fundraisers)	4 consecutive days	May not be sold in competition with school meals in the food service area during meal service	NS	<a href="#">Policy; Guidance Document</a>	Not dated
IL	NS	Grades 8 and below: 0 days of fundraisers  Grades 9-12: 9 days of fundraisers	<ul style="list-style-type: none"> <li>• School must adopt a policy on exemptions           <ul style="list-style-type: none"> <li>• Must include exemption policy in wellness policy</li> <li>• Must maintain records</li> </ul> </li> </ul>	NS	Law: 23 Ill. Admin. Code 305.15 <sup>20</sup>	June 25, 2014
IN	2	1 day	NS	NS	<a href="#">Policy</a>	March 18, 2014
KS	1 per school organization per semester	2 days	Cannot be given to another group	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 <sup>21</sup>	<a href="#">Policy</a>	Tracking begins end of 2014-2015 school year
KY	0	NA	NA	NS	<a href="#">Guidance Document</a>	April 2014 <sup>22</sup>
LA	0	NA	NA	NS	<a href="#">Guidance Document</a>	Not dated
MA	NO POLICY*					
MD	0	NA	NA	NS	<a href="#">Policy</a> <sup>23</sup>	June 27, 2014
ME	NO POLICY*					

<sup>20</sup> 23 Ill. Admin. Code 305.15 provided for 9 exempt fundraising days in grades 8 and below and 36 exempt fundraising days in grades 9-12 during school year 2014-2015.

<sup>21</sup> This definition was added in a 2015 frequently asked questions document. Kansas State Department of Education. Smart Snacks FAQs. March 2015. Available at [http://www.knsnack.org/snp/Docs/SNP\\_Guidance/Smart\\_Snacks/SmartSnacksFAQs\\_Oct\\_2016.pdf](http://www.knsnack.org/snp/Docs/SNP_Guidance/Smart_Snacks/SmartSnacksFAQs_Oct_2016.pdf) Last accessed December 1, 2016.

<sup>22</sup> Same requirement restated for school year 2015-2016. Kentucky Department of Education. Smart Snacks. 2015. Available at <http://education.ky.gov/federal/SCN/Documents/Smart%20Snacks-Waiver%2015-16.pptx> Last accessed December 1, 2016. And again for school year 2016-17. Kentucky Department of Education. Smart Snacks. 2016. Available at [http://education.ky.gov/federal/SCN/Documents/Smart%20Snacks\\_SY16-17.pptx](http://education.ky.gov/federal/SCN/Documents/Smart%20Snacks_SY16-17.pptx) Last accessed December 1, 2016.

<sup>23</sup> July 21, 2014 [memo](#) confirmed that the adoption of the Maryland Nutrition Standards included a policy of zero exempt fundraisers.

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
MI	2 per week	1 day	Not allowed to directly compete with federally reimbursable meals	NS	Law: MI Comp. Laws Serv. § 380.1272b; <a href="#">Policy</a> ; <a href="#">Website</a>	Law: September 1, 2015 Policy: July 1, 2015 Website: Not dated
MN	0	NA	NA	An event that includes any activity during which currency, tokens, or tickets, etc., are exchanged for the sale/purchase of a product in support of the school or school-related activity	<a href="#">Website</a>	School year 2015-2016
MO	5	1 day	May not be sold in competition with school meals in the food service area during meal service	NS	<a href="#">Guidance Document</a>	Not dated
MS	0	NA	NA	NS	<a href="#">Guidance Document</a>	July 2014
MT	0	NA	NA	NS	<a href="#">Guidance Document</a>	Not dated
NC	0	NA	NA	Activities in which students or others sell products to raise money for the school <sup>24</sup>	<a href="#">Guidance Document</a>	August 2014
ND	3	1 day	NS	NS	<a href="#">Policy</a> ; <a href="#">Guidance Document</a>	Policy: July 1, 2014 Guidance Document: Not dated
NE	0	NA	NA	NS	<a href="#">Website</a>	School Year 2016-2017

<sup>24</sup> Eat Smart Move More North Carolina. Eat Smart: North Carolina's recommended standards for all foods available in school. 2004. Available at <http://www.eatsmartmovemorenc.com/EatSmartSchoolStds/Texts/SchoolFoodsStandards.pdf> Last accessed December 1, 2016.

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
NH	3	3 days	May not be sold in competition with school meals in the food service area during meal service	NS	<a href="#">Guidance Document</a>	July 1, 2014
NJ	0	NA	NA	NS	<a href="#">Policy</a>	August 15, 2014
NM	2 per semester or trimester	1 day	May not be conducted in competition with school meals in the food service area during meal service	A sale on a school campus to benefit a school or school organization of beverage or food products limited by a USDA school meal program for use, consumption or sale during the school day	Law: NM Admin. Code 6.12.5.8	December 30, 2014
NV	0	NA	NA	The sale of items for monetary gain intended for consumption during the school day	<a href="#">Policy; Website</a>	Policy: September 5, 2014  Website: School Year 2015-16
NY	0	NA	NA	Any activity where currency/tokens/ tickets, etc., are exchanged for a product in support of the school or school-related activity	<a href="#">Policy</a>	September 16, 2014
OH	NO POLICY*					
OK	30 per semester	14 days	<ul style="list-style-type: none"> <li>•Prohibited from taking place while meals are being served</li> <li>•School district must adopt written policy that provides for an exempt fundraiser contact person</li> <li>•Must keep documentation for each fundraiser on file</li> </ul>	NS	Okla. Admin. Code 210:10-3-112	August 27, 2015
OR	0	NA	NA	NS	<a href="#">Policy</a>	September 8, 2014

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

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State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
PA	Elementary/ Middle Schools: 5  High Schools: 10	1 school week or 5 consecutive days	NS	An event that includes an activity which currency/token/tickets, etc. are exchanged for the sale/purchase of a product in support of the school or school-related activities	<a href="#">Policy</a>	June 30, 2014 <sup>25</sup>
RI	0 (career and technical schools with culinary arts may request exemptions) <sup>26</sup>	NA	NA	NS	<a href="#">Guidance Document</a>	July 1, 2014
SC	30 (school may request waivers for additional exemptions)	2 days <sup>27</sup>	NS	NS	<a href="#">Policy</a>	January 22, 2015 <sup>28</sup>
SD	1 per school-sponsored group	1 day	Groups cannot share fundraisers	NS	<a href="#">Policy</a>	July 1, 2014
TN	NS	20 days per semester (LEAs may request approval to exceed 20 day limit)	May not be sold in competition with school meals in the food service area during meal service	NS	Tenn. Rules and Regs. 0520-01-06-.04	June 29, 2016
TX	NS	6 days of fundraisers	May not be sold in competition with school meals in the food service area during meal service	NS	Law: 4 TX Admin. Code 26.2	June 28, 2015
UT	3 (additional fundraisers may be requested by the Career and Technical Education Programs)	5 consecutive school days	NS	NS	Law: UT Admin. Code R277-719-5	August 8, 2014

<sup>25</sup> August 10, 2015 [memo](#) restates the same requirements for school year 2015-2016.

<sup>26</sup> R.I. Gen. Laws. § 16-21-7 created this special exemption effective August 11, 2016 if the non-compliant items have been prepared by the students as part of their curriculum and are not sold in competition with school meals during the meal service.

<sup>27</sup> During school year 2017-2018, fundraisers may last up to 1 day.

<sup>28</sup> South Carolina's policy on exempt fundraisers was implemented with decreasing lengths for fundraisers during each consecutive school year. The current policy allowing fundraisers to last 2 days went into effect for school year 2016-17, however the original policy statement was effective in January 2015.

\*Under Smart Snacks, if no policy is adopted the state defaults to zero exemptions allowed.

State	Number of Exemptions Allowed <sup>6</sup>	Length of Each Exempt Fundraiser or Number of Fundraiser Days Allowed	Additional Restrictions	Definition of Fundraiser	Source	Effective Date or Document Date
VA	30	NS	NS	NS	Law: VA Code Ann. § 22.1-207.4 <a href="#">Guidance Document</a>	July 1, 2015
VT	0	NA	NA	NS	<a href="#">Guidance Document</a>	February 9, 2015 <sup>29</sup>
WA	0	NA	NA	NS	<a href="#">Guidance Document</a>	April 2014 <sup>30</sup>
WI	2 per student organization	2 weeks	May not compete directly with the sale of reimbursable meals <sup>31</sup>	NS	<a href="#">Policy; Guidance Document</a>	Policy: May 28, 2014 Guidance Document: September 2014 <sup>32</sup>
WV	NO POLICY*					
WY	5 (may request additional exemptions at state agency discretion)	2 weeks (10 school days)	Prohibited during school meal service	NS	<a href="#">Policy; Guidance Document</a>	Policy: July 1, 2014 Guidance Document: 2014

<sup>29</sup> This policy was restated in the 2015 Vermont School Wellness Policy Guidelines, which were updated again in 2016 and are available at [http://healthvermont.gov/local/school/documents/school\\_wellness\\_policy\\_guidelines.pdf](http://healthvermont.gov/local/school/documents/school_wellness_policy_guidelines.pdf) Last accessed December 1, 2016.

<sup>30</sup> This same requirement was restated in a reminder newsletter sent to child nutrition sponsors for school year 2016-17. Child Nutrition Services. CNS FYI: Smart Snacks Standards Reminders for SY 16-17. 2016. Available at <http://www.k12.wa.us/ChildNutrition/Programs/NSLBP/pubdocs/SmartSnacksStandardsRemindersforSY16-17.pdf> Last accessed December 1, 2016.

<sup>31</sup> Wisconsin Department of Public Instruction. In a “Nutshell” Nutrition Standards for All Foods Sold in Schools School Year 2015-2016. 2015. Available at <https://dpi.wi.gov/sites/default/files/imce/school-nutrition/pdf/in-a-nutshell-smart-snacks.pdf> Last accessed December 1, 2016.

<sup>32</sup> This same requirement was restated in the school year 2016-17 In a “Nutshell” document. In a “Nutshell” Smart Snacks: Nutrition Standards for All Foods Sold in Schools. 2016. Available at <http://dpi.wi.gov/sites/default/files/imce/school-nutrition/pdf/smart-snacks-in-a-nutshell.pdf> Last accessed December 1, 2016.

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