

# Maine's Law Banning Food Ads in Schools

## Understanding the Law



In many schools, foods and beverages are advertised everywhere – in hallways and cafeterias, in classrooms and athletic facilities, on paper products and scoreboards, and in teaching materials and school publications. Study after study has shown that food and beverage advertising influences children's food preferences and purchases – and their diets and health.<sup>1</sup>

In 2007, the Maine legislature passed the first state law prohibiting brand-specific advertising of certain unhealthy foods and beverages in schools. To help Maine schools comply with the law, the National Policy and Legal Analysis Network to Prevent Childhood Obesity (NPLAN) has developed this fact sheet.

### Background

Since 1985, federal law has prohibited the sale of "Foods of Minimal Nutrition Value" (FMNV) to students during school meal times.<sup>2</sup> Federal law also permits states to impose more rigorous regulations.

In 2005, the Maine legislature enacted a law directing the Maine Department of Education (DOE) to adopt rules to establish standards for foods and beverages sold on school property outside of school meal programs.<sup>3</sup> (The law stated that the rules would not apply to community events and fundraisers held outside the normal school day.<sup>4</sup>) Later that year the DOE adopted rules that, with some limited exceptions, prohibited the sale of FMNV at any time on school property.<sup>5</sup>

In 2007, the Maine legislature amended the law, prohibiting brand-specific advertising on school grounds for foods that are not allowed to be sold to students (i.e., FMNV).<sup>6</sup> In 2011, the Maine legislature further amended the law to specify that the DOE's nutrition standards do not apply to foods prepared in culinary arts programs provided by career and technical schools and programs.<sup>7</sup>

### What are "Foods of Minimum Nutritional Value" (FMNV)?

Based on federal law, FMNV include:

- Soda
- Water ices
- Chewing gum
- Candies (including hard candies, jellies and gums, marshmallow candies, fondant, licorice, spun candy, and candy-coated popcorn)<sup>8</sup>
- Any food containing less than 5 percent of the Reference Daily Intake (RDI) for each of eight specified nutrients per 100 calories and less than 5 percent of the RDI for each of eight specified nutrients per serving. The eight nutrients are: protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium, and iron.
- Any artificially sweetened food, a food that provides less than 5 percent of the RDI for each of the eight specified nutrients per serving.<sup>9</sup>

## Restrictions on Food Sales and Advertising in Schools

Food Sales Restrictions	Exceptions to Food Sales Restrictions <sup>10</sup>	Advertising Ban	Exceptions to Advertising Ban
FMNV may not be sold to students: <ul style="list-style-type: none"> <li>• At any time (including before and after school)</li> <li>• Anywhere on campus (including school cafeterias, stores, and vending machines)</li> </ul>	The restrictions do not apply to: <ul style="list-style-type: none"> <li>• State-approved, instructional Career and Technical Education (CTE) Culinary Arts Programs</li> <li>• Sales to the public at community events or fundraisers held outside the normal school day</li> </ul> And, if the local school board passes a policy, the restrictions do not apply: <ul style="list-style-type: none"> <li>• To school staff (e.g., staff may have soda vending machines in faculty lounges)</li> </ul>	Advertising of specific brands of FMNV is prohibited: <ul style="list-style-type: none"> <li>• At any time (including before and after school)</li> <li>• Anywhere in school buildings or on school grounds, including in:               <ul style="list-style-type: none"> <li>◦ School cafeterias –including on posters, menu boards, paper products</li> <li>◦ Faculty lounges, including on vending machines</li> <li>◦ In school stores</li> <li>◦ In gymnasiums, locker rooms, stadiums, and other athletic facilities – including on scoreboards, athletic equipment, sports bags</li> </ul> </li> </ul>	Advertising of specific brands of FMNV is permitted: <ul style="list-style-type: none"> <li>• In/on broadcast media</li> <li>• In print media such as newspapers and magazines</li> <li>• On product packaging</li> <li>• On clothing with brand images worn on school grounds</li> </ul> Advertising is permitted for specific brands of foods and beverages that are not FMNV.

To comply with the law, schools need to eliminate all brand-specific advertising of FMNV. To do that, NPLAN encourages schools — with assistance from students, teachers, parents, staff, or community volunteers — to thoroughly survey school facilities and grounds for brand-specific advertising of FMNV. In the event such surveys locate advertising that should not be displayed, administrators should remove the advertising. In addition, administrators should review their contracts with vendors to ensure that the contracts are consistent with state law and that vendors are in full compliance. If a contract contains a provision that violates state law, that provision is unenforceable. Administrators should work with legal counsel to amend the contract. Finally, a school may have obtained, before 2007 (when the law was enacted), a scoreboard or similar large piece of equipment that advertises a brand-specific FMNV. If the school lacks the funds to replace the equipment, the school may simply cover up the existing advertising.

NPLAN will be providing more resources to help schools comply with the advertising ban. NPLAN has a wealth of resources to help schools create a healthy nutrition environment. Visit [www.nplan.org](http://www.nplan.org) for more information.



[phlpnet.org](http://phlpnet.org)

*The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of Public Health Law & Policy (PHLP). PHLP is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*

*Support for this document was provided by a grant from the Robert Wood Johnson Foundation.*

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<sup>1</sup> McGinnis JM, Gootman J, and Kraak VI. Food marketing to children and youth: threat or opportunity? Washington (DC): National Academies Press; 2006.

<sup>2</sup> In 2010, Congress passed the Healthy, Hunger-Free Kids Act, which reauthorized and amended federal childhood nutrition programs, including the national school lunch and breakfast programs. Public Law 111-296 (2010). The law requires the U.S. Department of Agriculture to enact rules regarding the sales at schools of competitive foods (foods sold outside the meal programs). 42 U.S.C. 1179(b)(1)(A). The USDA originally planned to issue the proposed rule in December 2011, although it has not yet done so. USDA. *Implementation Plan: Healthy, Hunger-Free Kids Act of 2010*. Available at: [www.fns.usda.gov/wic/lawsandregulations/HHFKA-ImplementationPlan.pdf](http://www.fns.usda.gov/wic/lawsandregulations/HHFKA-ImplementationPlan.pdf).

<sup>3</sup> Title 20-A Maine Rev. Stat. Ann § 6662, 2005 Me. Legis. Serv. Ch. 435 (S.P. 263) (L.D. 796)(West).

<sup>4</sup> *Id.*

<sup>5</sup> Maine Admin. Code Ch. 51 § 2 appears to prohibit more than just the sales of FMNV. Section 2 states, in pertinent part:

Beginning July 1, 2005, any food or beverage sold at any time on school property of a school participating in the National School Lunch or School Breakfast Programs shall be a planned part of the total food service program of the school **and shall include only those items which contribute both to the nutritional needs of children and the development of desirable food habits**, and shall not include foods of minimal nutritional value as defined in Section 1 above . . . (Emphasis added.)

The highlighted phrases seem to impose a higher standard than simply prohibiting the sales of FMNV, by requiring the foods to contribute to the nutritional needs of children and the development of desirable food habits. It appears, however, that the DOE interprets section 2 as merely prohibiting the sales of FMNV. The Department of Education issued "Frequently Asked Questions and Answers," with Chapter 51 to "clarify the requirements put forth in the rule." Available at: [www.maine.gov/education/sfs/chapter51.html](http://www.maine.gov/education/sfs/chapter51.html). The Department's answers in that document indicate that it interprets Chapter 51 to prohibit only the sales of FMNV. *See, e.g.,* Answers no. 2, 5.

<sup>6</sup> Title 20-A Maine Rev. Stat. Ann § 6662; 2007 Me. Legis. Serv. Ch. 156 (S.P. 67) (L.D. 184) (West).

<sup>7</sup> Title 20-A Maine Rev. Stat. Ann § 6662; 2011 Me. Legis. Serv. Ch. 224 (H.P. 398) (L.D. 505) (West).

<sup>8</sup> The Maine DOE interprets chapter 51 as prohibiting the sale of all candies. E-mail communication from Maine DOE representative on February 3, 2012, on file with Public Health Law and Policy.

<sup>9</sup> Under federal law, the USDA has itemized foods of minimal nutritional value to include only soda, water ices, chewing gum, and the types of candies listed above. 21 C.F.R. Pt. 210, Appendix D. Those who wish to have a food reclassified so that it does not fall within FMNV (or alternatively does fall within FMNV) can petition the USDA to have the food reclassified. The petitioner must disclose the amount of the eight nutrients per serving, after which the USDA makes a determination. The USDA publishes a list of exempted foods. *Id.*

<sup>10</sup> The DOE rules are somewhat inconsistent with section 6662. The statute prohibits application of the FMNV restriction to sales of food to the public at community events or fundraisers outside of the normal school day and to culinary arts programs, while DOE Rule 51, section 2 allows these exceptions, only if the school board passes a policy permitting such exception. The inconsistencies exist, partly, because the statute was amended after 2005, but the DOE did not amend the rules to reflect the changes to the statute. "An agency interpretation of a statute is invalid if it is contrary to the plain meaning of the statute." *Whitney v. Wal-Mart Stores*, 895 A.2d 309, (Maine 2006). As a practical matter, however, the inconsistency of the rule will not matter, provided that the school complies with the statute – by not applying the prohibition on sales to community events outside of the school day or to culinary arts programs – whether by direction of the statute or school board policy.