

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 702 KAR 6:090. Minimum nutritional standards for foods and beverages available on public
6 school campuses during the school day; required [~~nutrition and~~] physical activity reports.

7 RELATES TO: KRS 156.035, 156.160, 156.200, 158.854(1), [~~158.856,~~] 160.345, 7 C.F.R.
8 210.11

9 STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.854(1)

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board
11 of Education to have the management and control of the common schools and all programs
12 operated in those schools. KRS 156.160 requires the Kentucky Board of Education to
13 promulgate administrative regulations establishing standards which school districts shall meet in
14 student, program, service, and operational performance. KRS 158.854(1) requires the Kentucky
15 Board of Education to promulgate an administrative regulation to specify the minimum
16 nutritional standards for all foods and beverages that are sold outside the National School
17 Breakfast and National School Lunch programs, whether in vending machines, school stores,
18 canteens, or a la carte cafeteria sales. This administrative regulation establishes the minimum
19 nutritional standards for food and beverages available on the school campus during the school
20 day and the requirements for reporting on how schools are providing physical activity under
21 KRS 160.345(11) and on the types of physical activity being provided.

Section 1. Definitions.

(1) “Competitive food” is defined by KRS 158.854(2)(a).

(2) “School day” is defined by KRS 158.854(2)(b).

(3) “Student-based enterprise” is defined by KRS 158.854(2)(d).

Section 2. Beverages. During the period of time beginning thirty (30) minutes after the last lunch period until the end of the last instructional period, a beverage offered for sale through a vending machine, school store, canteen, or fundraiser on school property shall meet the requirements established in 7 C.F.R. 210.11.

Section 3[2]. Food. During the period beginning thirty (30) minutes after the last lunch period until the end of the last instructional period, a food item offered for sale through a vending machine, school store, canteen, or fundraiser on school property shall meet the requirements established in 7 C.F.R. 210.11.

Section 4[3]. A la carte Items. A food or beverage item offered for sale as an a la carte item on the cafeteria line during the serving of breakfast or lunch shall meet the requirements established in 7 C.F.R. 210.11.

Section 5. A student-based enterprise that sells competitive foods throughout the school day shall meet the requirements established in 7 C.F.R. 210.11.

~~[Section 4. Local District Nutrition Program Report.~~

~~(1) A school nutrition director of the local district shall complete the assessment of the nutrition program required under KRS 158.856 and issue a report at least sixty (60) days prior to the public forum required by KRS 158.856(5).~~

~~(2) The director may issue the report via posting to the district Web site.~~

~~(3) A local district superintendent shall submit a summary of the findings and recommendations of the nutrition report as required by KRS 158.856(6) to the Kentucky Department of Education by May 1 of each year.]~~

Section ~~6~~[5]. Student Physical Activity.

~~[(1)]~~ By May 1 of each year, and in the format determined by the Kentucky Department of Education, each school subject to the requirements of KRS 160.345(11) shall report to the Kentucky Department of Education for the current school year on how the school is providing physical activity under KRS 160.345(11) and on the types of physical activity being provided [A local district superintendent shall evaluate the student physical activity environment, including the amount of time and types of physical activity provided in the elementary schools, as required in KRS 160.345(11), and release the report at least sixty (60) days prior to the public forum required by KRS 158.856(5)].

~~[(2) A local district superintendent shall submit the report on physical activity, including a summary of findings and recommendations to the Department of Education by May 1 of each year.~~

~~(3) The superintendent may release the report via posting to the district Web site.]~~

(16 Ky.R. 2290; 2673; eff. 6-10-1990; 17 Ky.R. 2046; eff. 3-13-1991; 32 Ky.R. 905; 1244; eff. 2-3-2006; 35 Ky.R. 2157; 36 Ky.R. 1211; eff. 1-4-2010; 43 Ky.R. 1671; eff. 6-2-2017; Cert eff 4-15-2024.)

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

(Date)

Dr. Robbie Fletcher
Commissioner of Education

(Date)

Sharon Porter Robinson, Chair
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on {Month ##, 2025}, at {time}, at {location of the meeting}. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through {Month ##, 2025}. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email: regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

702 KAR 6:090

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

Subject Headings: Education; Education: Elementary; Education: Secondary

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum nutritional standards for food and beverages available on the school campus during the school day and the requirements for reporting on how schools are providing physical activity under KRS 160.345(11) and on the types of physical activity being provided.

(b) The necessity of this administrative regulation: KRS 158.854(1) requires the Kentucky Board of Education to promulgate an administrative regulation to specify the minimum nutritional standards for all foods and beverages that are sold outside the National School Breakfast and National School Lunch programs, whether in vending machines, school stores, canteens, or a la carte cafeteria sales. KRS 160.345(11) requires the Kentucky Department of Education to report to the Legislative Research Commission no later than November 1 of each year on how schools are providing physical activity under KRS 160.345(11) and on the types of physical activity being provided.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.070 authorizes the Kentucky Board of Education to have the management and control of the common schools and all programs operated in those schools. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 158.854(1) requires the Kentucky Board of Education to promulgate an administrative regulation to specify the minimum nutritional standards for all foods and beverages that are sold outside the National School Breakfast and National School Lunch programs, whether in vending machines, school stores, canteens, or a la carte cafeteria sales. This administrative regulation establishes the minimum nutritional standards for food and beverages available on the school campus during the school day and the requirements for reporting on how schools are providing physical activity under KRS 160.345(11) and on the types of physical activity being provided.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the minimum nutritional standards for food and beverages available on the school campus during the school day and the requirements for reporting on how schools are providing physical activity under KRS 160.345(11) and on the types of physical activity being provided.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates the regulation to comply with changes to KRS 158.854 made by House Bill 555 from the 2026 legislative session and the repeal of KRS 158.856 by Senate Bill 68 from the 2025 legislative session.

(b) The necessity of the amendment to this administrative regulation: This amendment updates the regulation to comply with changes to KRS 158.854 made by House Bill 555 from the 2026 legislative session and the repeal of KRS 158.856 by Senate Bill 68 from the 2025 legislative session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the regulation to comply with changes to KRS 158.854 made by House Bill 555 from the 2026 legislative session and the repeal of KRS 158.856 by Senate Bill 68 from the 2025 legislative session.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the regulation to comply with changes to KRS 158.854 made by House Bill 555 from the 2026 legislative session and the repeal of KRS 158.856 by Senate Bill 68 from the 2025 legislative session.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? Yes. See 2026 Ky. Acts ch. 81 and 2025 Ky. Acts ch. 86, sec. 8.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Education and public school districts.

(5) Provide an analysis of how the entities identified in question (4) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (4) will have to take to comply with this administrative regulation or amendment: If a local board of education chooses to identify a student-based enterprise to sell competitive foods thought the school day, the regulation amendment provides that the student-based enterprise must meet the requirements established in 7 C.F.R. 210.11. The regulation amendment also updates the reporting requirement for schools subject to the requirements of KRS 160.345(11) to provide that each school must report to the Kentucky Department of Education for the current school year on how the school is providing physical activity under KRS 160.345(11) and on the types of physical activity being provided.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4): The cost to the Kentucky Department of Education and local school districts is expected to be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4): The Kentucky Department of Education will be able to comply with its reporting requirements in KRS 160.345(11) to the Legislative Research Commission. School districts with a student-based enterprise will be compliant with federal law.

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be minimal cost to the Kentucky Department of Education.

(b) On a continuing basis: The ongoing cost to the Kentucky Department of Education will be minimal.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment: Federal and General Funds.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(10) TIERING: Is tiering applied? Tiering is not applied. The regulation applies uniformly.

FISCAL IMPACT STATEMENT

702 KAR 6:090

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 156.070, 156.160, and 158.854.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: KRS 158.854.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Education and Kentucky Department of Education.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year: Any expenditures are expected to be minimal.

For subsequent years: Any expenditures are expected to be minimal.

2. Revenues:

For the first year: This regulation is not expected to generate revenue.

For subsequent years: This regulation is not expected to generate revenue.

3. Cost Savings:

For the first year: No cost savings are anticipated.

For subsequent years: No cost savings are anticipated.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local school districts.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year: Costs to local school districts are in the form of staff time for completing the required report to the Kentucky Department of Education. These costs are estimated to be minimal.

For subsequent years: Costs to local school districts are in the form of staff time for completing the required report to the Kentucky Department of Education. These costs are estimated to be minimal.

2. Revenues:

For the first year: This regulation is not expected to generate revenue.

For subsequent years: This regulation is not expected to generate revenue.

3. Cost Savings:

For the first year: No cost savings are anticipated.

For subsequent years: No cost savings are anticipated.

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year: Not applicable.

For subsequent years: Not applicable.

2. Revenues:

For the first year: Not applicable.

For subsequent years: Not applicable.

3. Cost Savings:

For the first year: Not applicable.

For subsequent years: Not applicable.

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: For the Kentucky Department of Education, any expenditures are expected to be minimal. The regulation is not expected to generate revenue and no cost savings are anticipated. For local school districts, costs are in the form of staff time for completing the required report to the Kentucky Department of Education. These costs are estimated to be minimal. The regulation is not expected to generate revenue and no cost savings are anticipated.

(b) Methodology and resources used to reach this conclusion: For the Kentucky Department of Education and local school districts, the estimates herein are based on prior program operations.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact”, as defined by KRS 13A.010(14): The administrative regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: The estimates herein are based on prior program operations.