



Economic Impact Analysis Virginia Department of Planning and Budget

8 VAC 20-740 – Regulations Governing Nutritional Guidelines for Competitive Foods Sold in Virginia Public Schools
Department of Education
September 29, 2011

Summary of the Proposed Amendments to Regulation

Senate Bill 414 (2010 Acts of Assembly) amended the Code of Virginia by adding Section 22.1-207.4 on nutritional guidelines for competitive foods. The legislation requires the Board of Education (Board), in cooperation with the Department of Health, to promulgate and periodically update regulations setting nutritional guidelines for all competitive foods sold to students during regular school hours that are not part of the federal school lunch or school breakfast program. The term “competitive foods” refers to food items served in the school setting outside of planned meals under the federal school lunch and school breakfast programs, and which may compete with foods served under the federal programs. Further, the legislation specifies “That in promulgating its regulations pursuant to this act, the Board of Education shall adopt either the Alliance for a Healthier Generation's Competitive Foods Guidelines or the Institute of Medicine's Recommended Standards for Competitive Foods in Schools as the initial statewide standard for competitive foods.” Pursuant to the legislation, the Board proposes the maximum calorie, fat, sugar, and sodium content for competitive foods contained within the Institute of Medicine's Recommended Standards for Competitive Foods in Schools.

In addition, federal regulations require every school division to have wellness policies that address nutrition and physical activity. The content and implementation of these policies have been at the discretion of the local school divisions. The proposed regulations would require each local school board to adopt the state nutrition guidelines as part of their existing local wellness policies.

Result of Analysis

There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact

At present, there is no federal regulation for competitive foods sold in schools. The U.S. Department of Agriculture is in the process of developing nutrition standards for competitive foods, as authorized under the 2010 federal legislation that reauthorizes the federal school meal programs (Healthy, Hunger-Free Kids Act of 2010). It is expected that the Institutes of Medicine's standards will be the basis for the federal regulations,¹ and that the federal regulations will be in place for the 2013-2014 academic year.

In order to be consistent with the expected federal regulations, the Board proposes to adopt the Institute of Medicine's Recommended Standards. These proposed regulations will likely be in effect prior to the federal regulations, and will thus likely have significant impact. Additionally, if the standards in the federal regulations turn out to differ in any attributes from Virginia's standards, whichever standard is more stringent applies. School divisions that do not comply with the standards would presumably be at risk of losing federal funds associated with the federal school lunch and school breakfast programs.

In practice it is common for schools to sell a la carte food items in addition to planned meals under the federal school lunch and school breakfast programs. An a la carte item means an individually priced food item served by the local school nutrition department that may or may not be part of the reimbursable meal under the federal child nutrition programs. A la carte items as well as food sold in vending machines and other food sold to students during regular school hours, including fundraisers, are subject to the maximum calorie, fat, sugar, and sodium content values in these proposed regulations. Beverages are exempt from the standards.

Most if not all school division sell competitive foods. The proposed standards will likely prohibit the sale of much of the competitive foods currently sold in most divisions. Thus, students throughout the Commonwealth will likely consumer fewer foods during the school day that are high in calories, fat, sugar, and sodium. This may result in improved health for

¹ Source: Virginia Department of Education

Virginia's schoolchildren. On the other hand it may have some negative consequences on revenues for schools. For example, one Virginia school division that on its own decided to stop selling french fries has noticed an associated decrease in food sale revenue. This anecdotal example is countered though by a study² published in the Journal of School Health which found that "Thus far, few data exist to substantiate the concern that changes in nutrition standards in schools lead to a loss in total revenue. An interesting phenomenon of increased participation in the National School Lunch Program was noted in a number of reports and might play a role in buffering financial losses."

At least some firms and farms which produce foods that meet the proposed standards for competitive food will likely encounter greater demand for their products. For example, standard hamburgers currently provided to schools do not meet the proposed standards, but healthier hamburgers which do meet the proposed standards and cost 20 percent more are commercially available.³ Of course at least some other firms and farms which produce foods that do not meet the proposed standards for competitive food will likely encounter lesser demand for their products. Since Virginia school divisions all together comprise a significant market, there will likely be some adjustment in food production to meet the changed demand. Once the federal regulations are in place, the incentive for food manufacturers to adjust their products to meet the standards will be even greater given the market for schools nationwide.

Businesses and Entities Affected

The proposed regulations affect the 132 public school divisions in the Commonwealth as well as food producers and distributors which supply schools with food.

Localities Particularly Affected

The proposed regulations do not disproportionately affect particular localities.

Projected Impact on Employment

At least some firms and farms which produce foods which meet the proposed standards for competitive food will likely encounter greater demand for their products. These firms may hire new workers. Other firms and farms which produce foods that do not meet the proposed

² Wharton CM, Long M, Schwartz MB. Changing nutrition standards in schools: the emerging impact on school revenue. J Sch Health. 2008; 78: 245-251.

³ Source: a Virginia-based food distributor which currently serves several school divisions

standards for competitive food will likely encounter lesser demand for their products. These firms may layoff workers.

Effects on the Use and Value of Private Property

The value of firms which produce foods which meet the proposed standards for competitive food may increase. The value of firms which produce foods that do not meet the proposed standards for competitive food may decrease.

Small Businesses: Costs and Other Effects

Small businesses which produce foods that are sold to schools and do not meet the proposed standards are likely to lose demand for their products. Depending on the product, it may be possible to adjust the product to meet the proposed standards. That would likely add to the costs, though.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Adverse impact on small businesses could potentially be lessened with less stringent proposed standards. That would of course likely reduce to some degree the intended benefit of healthier food consumption.

Real Estate Development Costs

The proposed regulations are unlikely to affect real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other

administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.