



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
December 9, 2014

Summary of the Proposed Amendments to Regulation

Chapter 718 (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. The term “competitive foods” refers to food available for sale to students on the school campus during the school day other than meals reimbursed under programs authorized by the federal Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966. Pursuant to the legislation, the Board proposes for this regulation the maximum calorie, fat, sugar, and sodium content for competitive foods.

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

The U.S. Department of Agriculture adopted the Institutes of Medicine's nutrition standards for competitive foods. These standards became effective as part of federal regulation on July 1, 2014. All schools that participate in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) are bound by the federal regulation and its nutrition standards for competitive foods. All Virginia school divisions participate in the NSLP and SBP for elementary school. Chesterfield, Falls Church and Hanover do not participate in NSLP and SBP for high school. Falls Church does not participate in NSLP and SBP for middle school. All other Virginia school divisions participate in the federal programs for high school and middle school as well as elementary school.¹

The Board proposes competitive food nutritional standards (maximum calorie, fat, sugar, and sodium content) that are consistent with the federal regulation.² Thus, this proposed state regulation (8 VAC 20-740) will essentially only affect high schools in Chesterfield, Falls Church and Hanover, and the middle school in Falls Church.

Historically it has been common practice 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 the federal and state regulations.

The standards in the federal regulation and this proposed state regulation effectively prohibit the sale of much of the competitive foods historically sold in schools. Thus, students 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 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 noticed an associated decrease

¹ Source: Virginia Department of Education

² Pursuant to Chapter 718 (2010 Acts of Assembly), the proposed state regulations governing nutritional standards for competitive foods sold in public schools do not apply to beverages. The federal regulation does apply to beverages.

in food sale revenue. This anecdotal example is countered though by a study³ 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.⁴ 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, due to the combination of the new federal regulation along with this proposed state regulation there will likely be some adjustment in food production to meet the changed demand.

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 particularly affect Chesterfield, Falls Church and Hanover.

Projected Impact on Employment

Due to the combination of the new federal regulation along with this proposed state regulation, 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 standards for competitive food will likely encounter lesser demand for their products. These firms may layoff workers.

³ Wharton CM, Long M, Schwartz MB. Changing nutrition standards in schools: the emerging impact on school revenue. J Sch Health. 2008; 78: 245-251.

⁴ Source: a Virginia-based food distributor which currently serves several school divisions

Effects on the Use and Value of Private Property

Due to the combination of the new federal regulation along with this proposed state regulation, 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

There are no clear alternative methods that would both reduce costs and still produce the desired policy.

Real Estate Development Costs

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

Legal Mandate

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action 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.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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