



Final Regulation Agency Background Document

Agency name	BOARD OF EDUCATION
Virginia Administrative Code (VAC) citation(s)	<u>8 VAC 20-740</u>
Regulation title(s)	REGULATIONS GOVERNING NUTRITIONAL GUIDELINES FOR COMPETITIVE FOODS AVAILABLE FOR SALE IN THE PUBLIC SCHOOLS
Action title	To establish nutritional guidelines for all foods available for sale to students on the school campus of any public school, and other public School Food Authorities such as Residential Child Care Institutions, during the school day other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 (National School Lunch and School Breakfast Programs); to update the BOE regulations to incorporate language for fundraiser exemptions to the nutrition standards as required by legislation and Board of Education Resolution 2015-34.
Date this document prepared	09/09/2016 Revised 02/06/2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In this final stage of the re-proposed regulations (8 VAC 20-740), updates were made to incorporate comments from the public comment period and the public hearing. The initial legislation requiring this regulation (SB 414,

2010) specified that these nutrition guidelines be periodically reviewed by the Board of Education to ensure they remain current, science-based, and consistent with any change to the federal laws or regulations on competitive foods. In 2015, the Virginia General Assembly passed legislation that amended the original SB 414 to allow public schools to conduct no more than 30 school-sponsored fundraisers per school year on the school campus, during regular school hours that would be exempt from the standards in the regulations. This 2015 legislation was initially implemented by a Board of Education Resolution because the regulations were still in the APA process. In light of the comments received at the public hearing and during the public comment period, and with the continued implementation of the U.S. Department of Agriculture (USDA) final rule governing competitive foods in schools, *National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010 (Smart Snacks in Schools rule)*, the re-proposed regulations were reviewed and updated to align with the USDA rule and to incorporate the fundraiser exemptions as required by HB 2114.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms or technical terms that are not also defined in the definitions section of the regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Board of Education approved the final stage of the regulations November 17, 2016.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Legal authority: SB 414 (2010) enacted on April 13, 2010, as Chapter 718 and codified as Section 22.1-207.4, *Code of Virginia*, HB 2114 (2015) enacted on March 23, 2015, as Chapter 568 and codified in Section 22.1-207.4, *Code of Virginia*.

Promulgating entity: Board of Education in cooperation with the Department of Health

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The regulations are required to be developed by statute (Section 22.1-207.4).

Additionally, rising rates of obesity in children have become a major health concern, because of both the impact on childhood health and the potential effect on the development of chronic disease in adulthood. In response to this growing concern, attention has focused on the need to establish nutrition standards for foods in schools. Federal regulations governing the National School Lunch Program and the School Breakfast Program establish nutrition standards for school meals that must be implemented. Federal regulations also require every school division to have a local wellness policy that addresses nutrition and physical activity. The content and implementation requirements for these local wellness policies have recently been updated to require more rigor, ongoing evaluation, updating and posting for the public. These final Board of Education regulations require each local school board to adopt the state nutrition guidelines as part of their local wellness policies. This would strengthen the local wellness policies and help to address factors that impact childhood obesity while increasing the nutritional quality of foods offered in the school setting.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The language in the final re-proposed regulations is updated to align with changes in the federal regulation governing competitive foods in schools to provide clarity and consistency and avoid having different sets of regulations that school divisions would be required to follow and to incorporate the Virginia legislation that allows for exemptions to the nutrition standards for up to 30 school-sponsored fundraisers.

- 8VAC 20-740-10 - Definitions: Added definitions for fundraisers, fundraiser exemptions, and regular school hours.
- 8VAC 20-740-20 - Applicability: D.4. was expanded to address the exempt fundraisers.
- 8VAC 20-740-30 - Nutrition Standards: deleted wording that allowed for phasing in of some of the standards through July, 2016 as this date has passed and these standards have been enacted.
- 8 VAC 20-740-35 - Exemption to the Nutrition Standards for School-Sponsored Fundraisers: new section added to address the 2015 legislation.
- 8 VAC 20-740-40 – Implementation and Compliance: B.3. was expanded to address the role of the Department in providing guidance on the implementation of fundraiser exemptions.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

Advantages will be healthier food options for all public school children. This may have a long-term effect on health and well-being, improve academic performance, and reduce health risks. Healthier food choices at school may also serve to increase consumption of healthier food options at home. Nutritional standards for competitive foods will complement the federal school meal nutrition standards for an overall healthier eating environment in schools. Additionally, the rising rate of childhood obesity has become a major health concern, because of both its impact on childhood health and as a contributing factor to the development of chronic disease in adulthood. In response to this growing concern, attention has focused on the need to establish nutrition standards for foods in schools by offering healthier food options on school grounds. From a nutritional perspective, the goal is to increase the consumption of whole grains, fruits, vegetables, and nonfat or low-fat dairy, and to reduce fat, sugars, and sodium. Federal regulations governing the National School Lunch Program and School Breakfast Program established updated nutrition standards for school meals in 2012 and strengthened federal nutrition standards governing competitive foods effective July 1, 2014.

Statewide nutritional guidelines for competitive foods available for sale to students during the school day on the school campus would strengthen the local wellness policies and help address some of the factors that impact

childhood obesity, and increase the nutritional quality of foods offered in the school setting.

Fundraisers exempt from meeting the nutrition standards required for all of the school nutrition programs and any other foods available for sale may present conflicting messages to students and could lead to unhealthy food options being available to students on the school campus during the regular school day.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

No requirements of this regulation exceed federal requirements. These regulations align with federal regulations.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The adopted regulations would apply to all public school divisions, public schools, and other public school food authorities (SFAs) in the Commonwealth of Virginia.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.,

This regulation could have a positive impact on families by educating children about healthier food options available at school. It may also help to address both the childhood obesity issue and the childhood hunger issue.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
8VAC 20-740-10 - Definitions:		Added definitions for fundraisers, fundraiser exemptions, and regular school hours.	Required by legislation to include fundraisers.
8VAC 20-740-20		Applicability: D.4. was expanded to address the exempt fundraisers.	Required by legislation to include fundraisers.
8VAC 20-740-30		Nutrition Standards: deleted	Rationale: The date has

		wording that allowed for phasing in of some of the standards through July 2016, as that date has passed and the standards have been enacted.	passed, the Federal regulations have been enacted, and the language was updated to align with the legislative changes.
8VAC 20-740-35		Exemptions to the Nutrition Standards for School-Sponsored Fundraisers: new section added to address the 2015 legislation.	Required by legislation to include fundraisers.
8VAC 20-740-40		Implementation and Compliance: B.3. was expanded to address the role of the Department in providing guidance on the implementation of fundraiser exemptions.	Required by legislation to include fundraisers.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
School Nutrition Association of Virginia	<p>The School Nutrition Association of Virginia would like to express our support for the proposed regulations. We represent over 1,700 members who provide high quality, affordable, nutritious meals to students across the Commonwealth. The SNA-VA was one of the stakeholder groups who worked on the “Healthy Snacks” legislation in 2010 and served on the advisory group that helped craft these regulations. We appreciate being included in this process and strongly support the purpose of the proposed regulations.</p> <p>We previously submitted comments in support of the regulations in October 2013. We understand that the proposed regulations must be amended in order to comply with legislation passed during the 2015 legislative session. HB 2114 will allow up to 30 fundraisers per school to be exempt from the regulations. SNA-VA did not support this legislation and we are deeply concerned about the effect this law will have on students’ health and well-being. However, we understand that the Board of Education is obligated to amend the regulations to comply with this law. While the language that will exempt fundraisers has not been added yet at this point in the process, the SNA-VA would like to give our input regarding the potential new language. We respectfully request that the Board of Education do the following:</p> <ul style="list-style-type: none"> • Provide clarification that it is optional to exempt up to 30 fundraisers. Individual school divisions may still enforce their own policies and not exempt any fundraisers. • Provide clarity on the timeframe of the fundraisers. SNA-VA requests that a fundraiser be considered to last one 	Thank you for the response. The Agency will consider the recommended language for defining fundraisers.

	<p>academic school day. Therefore, a fundraising activity that lasts two weeks would count as 10 fundraisers, not just one fundraiser.</p> <ul style="list-style-type: none"> •Provide guidance to schools on alternative fundraisers that do not involve the sale of unhealthy foods to students. <p>Thank you for the opportunity to submit comments. We look forward to remaining engaged in the process and will provide comments again once the regulations are revised to reflect the 2015 legislation.</p>	
Prince Edward County Public Schools Food Service Department	<p>I am in support of the proposed regulations but I have some concerns on HB 2114. This bill allows up to 30 fundraisers per school to be exempt from the regulations.</p> <p>Clarification is needed on the timeframe of the fundraisers. Can one fundraiser last a whole year? I request that a fundraiser be no longer than one week and count as 5 fundraisers.</p> <p>Encourage school divisions to use alternative fundraisers that do not involve the sale of food. Make half of all fundraisers during the school year be nonfood sales.</p> <p>Thanks you for the opportunity to submit comments.</p>	Thank you for the response. The Agency will clarify the definition of fundraisers.
Wilfrid Nixon, Salt Institute	<p>In the Purpose, section of this re-proposed regulation, you state “Section 22.1-207.4 requires the development and implementation of regulations regarding nutritional guidelines. In addition, the rising rate of obesity in children has become a major health concern, both because of its impact on childhood health and its potential effect on the development of chronic disease in adulthood.” However, there is no evidence to suggest that obesity is in any way caused by excessive ingestion of sodium. If anything, the opposite is true.</p> <p>Although certainly not a primary cause, the continued promotion of salt reduction found in the recommendations in the <i>Dietary Guidelines</i> and the anticipated call by the FDA for voluntary salt reductions in food products will likely worsen, not improve, the ongoing obesity crisis because people will consume more calories just to satisfy their innate salt appetite.</p> <p>In conclusion, the scientific evidence is clear that sodium intake in the US is toward the low end of the safe range, and thus attempts to restrict sodium intake are unnecessary. Further, there is evidence that there is a “salt appetite” that needs to be satisfied by humans, and so reducing the levels of sodium in foods would only result in students in the schools eating more food, thus perhaps contributing to the very issue of obesity which these regulations purport to address. We would therefore again urge most strongly that you remove Standard 4: Sodium from the four nutritional standards proposed in regulation 8VAC20-740.</p>	Thank you for your comments. Sodium standards will not be removed for this regulation as it aligns with the Federal regulations that include sodium as one of the nutrition standards.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
None	<u>8VAC20-740-10. Definitions</u>		Added new definitions for fundraiser, fundraiser exemptions and regular school hours. Rationale: to incorporate legislative changes.
	<u>8VAC20-740-20. Applicability sections D.4.</u>		Included language to address the fundraiser exemptions. Rationale: to incorporate legislative changes.
	<u>8VAC20-740-30. Nutrition standards</u>		Updated information related to the phasing in of some standards by July 1, 2016. Rationale: The date has passed and the Federal regulations have been enacted and to incorporate legislative changes.
	<u>8VAC20-740-35. Exemption to the Nutrition Standards for School Sponsored Fundraisers</u>		New section added to address the 2015 legislation. Rationale: to incorporate legislative changes
	<u>8VAC20-740-40. Implementation and compliance</u>		B.3. was expanded to address the role of the Department in providing guidance on the implementation of fundraiser exemptions. Rationale: to incorporate legislative changes.