

Virginia Board of Education Agenda Item



Agenda Item: C

Date: June 26, 2014

Title	Final Review of Amendments to the <i>Regulations Governing Nutritional Guidelines for Competitive Foods Available for Sale in the Public Schools (Re-Proposed stage)</i>		
Presenter	Mrs. Catherine Digilio Grimes, Director, Office of School Nutrition Programs		
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Purpose of Presentation:

Action required by state or federal law or regulation.

Previous Review or Action:

Previous review and action. Specify date and action taken below:

Date: September 23, 2010 Action: Notice of Intended Regulatory Action (NOIRA) approved

Date: June 23, 2011 Action: First Review of the proposed stage

Date: October 24, 2013 Action: Public Hearing

Date: May 22, 2014 Action: First Review of the Amendments to the re-proposed regulation

Action Requested:

Final review: Action requested at this meeting.

Alignment with Board of Education Goals: Please indicate (X) all that apply:

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
X	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
X	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
X	Other Priority or Initiative. Specify: child nutrition

Background Information and Statutory Authority:

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. A copy of the legislation is attached.

The legislation requires the Board of Education, in cooperation with the Department of Health, to promulgate and periodically update regulations setting nutritional guidelines for all competitive foods sold to students during the school day that are not part of the federal school lunch or school breakfast program. The term “competitive foods” refers to all food available for sale to students on the school campus 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 (i.e., School Lunch and School

Breakfast). The regulations to be developed pursuant to the legislation are required to address calorie, fat, sugar, and sodium content, and may address other areas.

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 that will contribute to an overall healthful eating environment. From a nutritional perspective, the goal is to increase the consumption of whole grains, fruits, vegetables, and nonfat or low-fat dairy, and reduce fat, sugars, and sodium in support of the Dietary Guidelines for Americans. Federal regulations governing the national school lunch program, school breakfast program, and afterschool snack program establish nutrition standards for school meals/snacks, and strengthened federal nutrition standards governing competitive foods will go into effect on July 1, 2014. Nutritional standards for competitive foods can complement the federal school meal nutrition standards for an overall healthier eating environment in schools.

Summary of Important Issues:

The language in the re-proposed regulation is aligned with the new 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. All references to beverages are eliminated consistent with SB 414. The re-proposed regulations contain changes in the following sections:

- 8VAC 20-740-10 - Definitions: modified several, added new definitions and deleted some.
- 8VAC 20-740-20 - Applicability: added item clarifying non-applicability of food available for sale to adults only.
- 8VAC 20-740-30 - Nutrition Standards: reworded and expanded language to align with the federal regulation; added section on General Standards, General Exemptions and Accompaniments.
- 8 VAC 20-740-40 - Implementations and Compliance: expanded to address recordkeeping, oversight and compliance.

As specified in enactment clause three of SB 414, the Board of Education shall work with the Department of Health, the School Nutrition Association of Virginia, the American Heart Association, the American Cancer Society, the Virginia Chapter of the American Academy of Pediatrics, the Virginia Wholesalers and Distributors Association, the Virginia Automatic Merchandising Association, and other stakeholders in conducting the research necessary for the development of the regulations, and in the dissemination of the nutritional guidelines to school divisions.

Further, SB 414 requires in the development and implementation of the regulations that:

- Nutritional guidelines be established for all foods available for sale to students on school grounds during regular school hours. “Competitive food” means all foods available for sale to students on the school campus during the school day other than meals reimbursed under the school breakfast or school lunch programs. In the school setting, these are typically food items available for sale to students as à la carte items in the cafeteria, in vending machines, in school stores/snack bars, and through other school activities. SB 414 explicitly excludes “beverages” under the definition of “competitive food.” In addition, food items served or provided, but not sold, to students, or those sold outside regular school hours or off the school campus are outside the purview of these regulations;

- The guidelines be based on the Institute of Medicine's (IOM) nutrition standards for competitive foods in schools or the competitive food guidelines established by the Alliance for a Healthier Generation as the initial statewide standard for competitive foods;
- The guidelines be periodically reviewed by the Board of Education with assistance from the Department of Health to ensure they remain current, science-based, and consistent with any changes to the federal laws or regulations on competitive foods; and
- Local school boards adopt the state guidelines as part of their existing local wellness policy to ensure compliance with the provisions of subsection A of Section 22.1-207.4.

The Department of Education conducted meetings with the above stakeholders on March 24, April 21, and May 25, 2011, to develop draft nutrition guidelines. The Institute of Medicine's (under the National Academy of Sciences) *Nutrition Standards for Foods in Schools: Leading the Way to a Healthier Youth* were used as the basis for the nutritional standards in the proposed regulations. The IOM standards were used since it was anticipated that the U.S. Department of Agriculture (USDA) would use them in developing its own nutritional standards for competitive foods, as it was authorized to do under the 2010 federal legislation that reauthorizes the federal school meal programs (Healthy, Hunger-Free Kids Act of 2010). The federal competitive food regulations were developed based on the IOM standards.

Consistent with SB 414 and the core nutrition components in the IOM standards, the initially proposed regulations set nutritional standards for competitive foods sold to students in the areas of calorie, fat, sugar, sodium content, and foods of minimal nutritional value. The Virginia Regulatory Town Hall Proposed Regulation Agency Background Document is attached that provides additional background on the proposed regulations.

On June 28, 2013, USDA issued the interim final rule, *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 interim final rule amends the National School Lunch Program and School Breakfast Program regulations to establish nutrition standards for all foods available for sale to students in schools during the school day on the school campus other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966. These new federal regulations governing competitive foods are effective July 1, 2014.

The initially proposed regulations were presented to the Board of Education for first review on June 23, 2011. The Board accepted these proposed regulations for first review and authorized the Department of Education to proceed with the next steps of the regulatory process under the Administrative Process Act (APA), including a public comment period and a public hearing.

SB 414 requires the guidelines to be periodically reviewed by the Board of Education to ensure they remain current, science-based, and consistent with any changes to the federal laws or regulations on competitive foods. In light of this requirement, and the comments received at both the public hearing conducted on October 24, 2013, and during the public comment period, the proposed regulations were reviewed and revised to align with the USDA interim final rule, *Smart Snacks in Schools*.

Due to the significant changes in the language of the initially proposed regulations, the regulations are being re-proposed and must follow the steps of the regulatory process under the Administrative Process Act (APA), including public comment.

There are no changes from the first review.

Impact on Fiscal and Human Resources:

It is anticipated that the adopted regulations will impact all school divisions 1) administratively, as they will be required to adopt the new nutritional standards as part of their required local wellness policies and maintain records documenting compliance with the competitive food nutrition standards; and 2) possibly financially, as they change the food offerings on the school campus during the regular school day to meet the regulatory requirements. The impact on the Department of Education to develop and implement these regulations is not expected to be significant and can be absorbed with existing staff. It is expected that the department will have to provide ongoing staff support and technical assistance to divisions in the implementation of these regulations.

Timetable for Further Review/Action:

The timetable for further action on the development of the regulations will be governed by the requirements of the Administrative Process Act.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve the proposed *Regulations Governing Nutritional Guidelines for Competitive Foods Sold in the Public Schools*.

Rationale for Action:

Section 22.1-207.4, *Code of Virginia*, requires the Board of Education to promulgate regulations setting nutritional guidelines for all competitive foods sold to students during regular school hours, and further requires the guidelines to be periodically reviewed by the Board to ensure they remain current, science-based, and consistent with any changes to the federal laws or regulations on competitive foods.

The Department worked with the required stakeholders to develop the proposed stage regulations, reviewed all public comment received, and in response revised the proposed regulations to align with the new federal regulations governing competitive foods. This alignment will eliminate the possibility of conflicts between the two sets of state and federal regulations.

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 718

An Act to amend the Code of Virginia by adding a section numbered 22.1-207.4, relating to nutritional guidelines for competitive foods in public schools.

[S 414]

Approved April 13, 2010

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 22.1-207.4 as follows:

§ 22.1-207.4. Nutritional guidelines for competitive foods.

A. The Board, in cooperation with the Department of Health, shall promulgate regulations setting nutritional guidelines for all competitive foods sold to students during regular school hours.

B. The Board, with assistance from the Department of Health, shall periodically review the nutritional guidelines for competitive foods to ensure that they remain current and science-based and shall also review the nutritional guidelines upon changes to federal law or regulations for competitive foods.

C. The regulations promulgated pursuant to this section shall include but not be limited to: calorie, fat, sugar, and sodium content.

For purposes of this section, "competitive food" means any food, excluding beverages, sold to students on school grounds during regular school hours that is not part of the school breakfast or school lunch program.

2. 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.

3. That the Board of Education shall work with the Department of Health, the School Nutrition Association of Virginia, the American Heart Association, the American Cancer Society, the American Academy of Pediatrics, Virginia Chapter, the Virginia Wholesalers and Distributors Association, the Virginia Automatic Merchandising Association, and other stakeholders to conduct any research necessary for the development of the regulations and dissemination of the guidelines to each local school division.

4. That the Board of Education shall report to the General Assembly on the status of the final regulations by December 1, 2011. The report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports.

5. That each local school board shall adopt the state guidelines as part of their existing local wellness policy to ensure compliance with the provisions of subsection A of § 22.1-207.4 of the Code of Virginia.

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Project 2611 – Re-Proposed

STATE BOARD OF EDUCATION

CH 740: To establish nutritional guidelines for all foods [~~sold~~ available for sale] to students in the public schools

CHAPTER 740 REGULATIONS GOVERNING NUTRITIONAL GUIDELINES FOR COMPETITIVE FOODS [~~SO~~L D AVAILABLE FOR SALE] IN THE PUBLIC SCHOOLS

8VAC20-740-10. Definitions.

"À 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.

"After school activities" mean activities that occur on [the] school [campus grounds] after [the regular school day hours].

"Beverage" means a drinkable liquid.

"Calorie" means the amount of heat required to change the temperature of one gram of water from 14.5 degrees Celsius to 15.5 degrees Celsius. Calorie is used synonymously with kilocalorie as a unit of measure for energy obtained from food and beverages.

"Child Nutrition Programs" mean school meal programs funded and regulated by the U.S. Department of Agriculture (USDA) and includes the National School Lunch

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Program (NSLP), School Breakfast Program (SBP), Afterschool Snack Programs (ASP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and Special Milk Program (SMP).

“Combination foods” mean products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein or grains.

“Competitive food” means any all food, excluding beverages, available for sale sold to students on the school campus grounds during regular the school day hours that is not part of the other than reimbursable meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966. served through the National School Lunch Program (NSLP), School Breakfast Program (SBP), or Afterschool Snack Program (ASP)

Competitive food includes all foods sold available for sale to students:

1. In school cafeterias as à la carte items not offered as a component of the planned reimbursable menu.
2. In vending machines located on the school campus grounds during the regular school day hours.
3. As fundraisers held on the school campus grounds during the regular school day hours.

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4. In school snack bars on [the] school [campus grounds] during [the regular] school [day hours].

5. In school stores operated on [the] school [campus grounds] during [the regular] school [day hours] by the school, a student association, or other school-sponsored organization.

6. At school activities such as special fundraisers, achievement rewards, classroom parties, school celebrations, classroom snacks, or school meetings held on [the] school [campus grounds] during [the regular] school [day hours].

[7. In culinary education programs where food prepared as part of the educational curriculum is sold to students (this does not apply if food is sold to adults only).]

This term does not apply to food a student brings from home for consumption at school [or items available for sale to adults only in areas not accessible to students (e.g., teachers lounges).]

"Dietary Guidelines for Americans" means guidelines jointly issued by the U.S. Department of Health and Human Services and U.S. Department of Agriculture and revised every five years, and that provide authoritative advice based on current scientific evidence and medical knowledge for people two years of age and older about how good dietary habits can promote health and reduce risk for major chronic diseases.

["Entrée item" means an item that is either: (a) A combination food of meat or meat alternate and whole grain rich food; or (b) A combination food of vegetable or fruit and

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meat or meat alternate; or (c) A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky).]

["Food of minimal nutritional value" or "FMNV" means foods and beverages that are restricted by the U.S. Department of Agriculture (7 CFR 210.11(a)(2) and subsection (a) of Appendix B to 7 CFR Part 210 Definition) unless specifically exempted by USDA. The federal FMNV definition is limited to the following four specific categories of foods and beverages:

1. Soda water (any carbonated or aerated beverages, i.e., beverages that are labeled as "aerated" or that bubble and fizz for several minutes after opening).

2. Water ices (any frozen, sweetened water such as "...sicles" and flavored ice with the exception of products that contain fruit, fruit juice, milk, milk ingredients, or egg ingredients other than egg whites).

3. Chewing gum (regular and sugarless).

4. Certain candies (regular and sugarless), including:

a. Hard candy (e.g., sour balls, candy sticks, lollipops, starlight mints, after-dinner mints, sugar wafers, rock candy, cinnamon candy).

b. Jellies and gums (e.g., gum drops, jelly beans, and jellied and fruit-flavored slices and shapes).

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~~c. Marshmallow candies, fondant, such as candy corn and soft mints, licorice, spun candy, and candy coated popcorn.~~

"Kcal" means kilocalorie, commonly known as calorie, which is a unit of measure in the United States for energy obtained from food and beverages. A kilocalorie is equal to 1,000 calories.

"Obesity" means obesity in children and adolescents referring to the age-specific and sex-specific body mass index (BMI) that is equal to or greater than the 95th percentile of the BMI charts of the Centers for Disease Control and Prevention (CDC).

~~["Regular school hours" means the same as the standard school day, as defined in 8VAC20-131-5, a calendar day that averages at least five and one-half instructional hours for students in grades 1 through 12, excluding breaks for meals and recess, and a minimum of three instructional hours for students in kindergarten. Regular school hours does not include school-related activities or events that occur either before or after the standard school day, such as clubs, yearbook, band and choir practice, student government, drama, childcare programs, interscholastic sporting events, school plays, band concerts, or other school-related programs.]~~

["School campus" means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.]

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"School day" means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day.

"School Food Authority" or "SFA" means, under the federal child nutrition laws, the entity that is legally responsible for the operations and administration of the local school nutrition programs (e.g., school division).

"School Health Advisory Board" or "SHAB" means an entity formed according to the provisions of § 22.1-275.1 of the Code of Virginia that assists in the development of wellness policies as required by § 204 of Public Law 108-265 (42 USC § 1751 et seq.)
[as amended] [and develops an annual report of activities that is required to be submitted to the Department of Education].

"Trans fat" means food items containing vegetable shortening, margarine, or any partially hydrogenated vegetable oil, unless the label required on the food, pursuant to applicable federal and state law, lists the trans fat content [as less than 0.5] zero grams per serving.

"Wellness policy" means a policy required for public schools participating in a nutrition program authorized by the Richard B. Russell National School Lunch Act (42 USC § 1751 et seq.) or the Child Nutrition Act of 1966 (42 USC § 1771 et seq.) [that meets minimum standards designed to support school environments that promote student wellness.]

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["Whole grains" means grains that are made with enriched and whole grain meal or flour, in accordance with the most recent grains guidance from the U.S. Department of Agriculture Food and Nutrition Service].

["Whole grain-rich" means products that contain at least 50 percent whole grains and the remaining grains in the product must be enriched].

8VAC20-740-20. Applicability.

A. This regulation shall apply to all public school divisions, public schools, and [public] school food authorities (SFAs) in the Commonwealth of Virginia.

B. This regulation shall not apply to beverages.

C. This regulation shall apply to the nutritional content of food items [excluding beverages available for sale sold] to students on the school [grounds campus] of any public school [, and other public SFAs such as Residential Child Care Institutions.] during [regular the] school [day hours]. It shall [apply to]:

1. Foods [available for sale sold] to students in vending machines.
2. Foods [available for sale sold] to students as à la carte items in the school cafeteria.
3. Foods [available for sale sold] to students at snack bars and stores operated by the school, a student association, or other school-sponsored organization.

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4. Foods [available for sale ~~sold~~] to students at school activities such as fundraisers.

[5. Foods available for sale to students by culinary or other educational programs.]

D. This regulation shall not apply to the nutritional content of foods [and beverages]:

1. Provided [as meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 ~~through the National School Lunch, School Breakfast, and Afterschool Snack programs, as regulated by 7 CFR Part 210 and 7 CFR Part 220].~~

2. [Available for sale ~~Sold~~] at snack bars, concession stands, or athletic events after [the ~~regular~~] school [day hours].

3. [Available for sale ~~Sold~~] either during intermission or immediately before or after athletic events [scheduled after the school day].

4. [Available for sale] ~~[Sold]~~ for school-related fundraising activities that take place off [the] school [campus ~~grounds~~].

5. [Available for sale ~~Sold~~] during activities that take place after [regular ~~the~~] school [day hours], such as clubs, yearbook, band and choir practice, student government, drama, sports practices, interscholastic sporting events, school plays, ~~[and]~~ band concerts, [etc].

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[6. Available for sale to adults only in areas not accessible to students.]

[E. The requirements of this regulation supplement 8 VAC 20-290-10 and 8 VAC 20-580-10-100 which remain in effect.]

8VAC20-740-30. Nutrition standards.

[A. ~~Competitive~~] The nutrition standards apply to all foods [available for sale ~~sold~~] to students [(a) outside the school meal programs; (b) on the school campus; and (c) at any time during the school day, and shall be consistent with ~~support~~] the [most recent] Dietary Guidelines for Americans. ~~by complying with the following nutritional standards.~~

[B. General Standards: to be allowable, a competitive food must:

1. Meet all of the competitive food nutrient standards, and

2. Be a grain product that contains 50 percent or more whole grains by weight or have as the first ingredient a whole grain (whole grain rich), or

3. Have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or

4. Be a combination food that contains ¼ cup of fruit and/or vegetable; or

5. Contain ten percent (10%) of the Daily Value of a nutrient of public health concern based on the most recent Dietary Guidelines for Americans (i.e., calcium, potassium, vitamin D or dietary fiber) for the period through June 30,

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2016. Effective July 1, 2016, this criterion is obsolete and may not be used to qualify as a competitive food.

If water is the first ingredient, the second ingredient must be one of the food items above.

C. General Exemptions:

1. Fresh, canned, and frozen fruits or vegetables with no added ingredients except water, or in the case of fruit, packed in 100 percent juice, extra light, or light syrup are exempt from the nutrient standards.

2. Canned vegetables that contain a small amount of sugar for processing purposes are also exempt.

3. An entrée item offered as part of the national school lunch program (under 7 CFR Part 210) or the school breakfast program (under 7 CFR Part 220) is exempt from all competitive food standards if it is offered as a competitive food on the day of, or the school day after, it is offered in the lunch or breakfast program. Exempt entrée items offered as a competitive food must be offered in the same or smaller portion sizes as in the lunch or breakfast program.

4. Side dishes offered as part of the lunch or breakfast program and served à la carte must meet the nutrition standards in this section.

D. Accompaniments: The accompaniments to a competitive food item must be included in the nutrient profile as a part of the food item served in determining if an

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item meets the nutrition standards for competitive food. The contribution of the accompaniments may be based on the average serving size of the accompaniment used per item.]

E. Nutrient Standards:

1. Standard 1: Calories.

a. Snack items [and side dishes sold à la carte] shall be [no more than] 200 calories [or less] per [items as served ~~portion,~~] or as packaged [,including the calorie content in any accompaniments, such as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standards].

b. Entrée items sold à la carte shall contain no more than 350 calories including the calorie content of any accompaniments, per items as served or as packaged, unless they meet the exemption for NSLP/SBP entrée items in section C above] and must meet all of the other nutrient standards in this section.

[c. The Calories contained in any accompaniments must be included in the nutrient profile as a part of the item served].

~~[b. À la carte entrée items shall not exceed calorie limits on comparable National School Lunch Program (NSLP) entrees. À la carte entrée items shall not provide more calories or larger portion sizes than the comparable NSLP entrée items. In accordance with 8VAC20-290-10, à la carte entrée items for~~

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~~sale to students shall be limited to those entrée items recognized as being components of the school breakfast program or school lunch program meal patterns.]~~

2. Standard 2: Fat.

~~[a. Snacks and food items shall meet the following criteria for dietary fat per portion or as packaged:]~~

~~(1) No more than 35% of total calories from fat.~~

~~(2) Less than 10% of total calories from saturated fats.~~

~~(3) Zero grams of trans fat.~~

~~b. Exceptions: Nuts and seeds (allowed as combination products as long as other nutrient standards are met; the fat content will not count against the total fat content of the product).~~

[a. Total Fat: Competitive foods shall contain no more than thirty-five percent (35%) of total calories from fat per item as packaged or served.

Exemptions to the total fat standard are granted for:

(1). Reduced fat cheese and part-skim mozzarella cheese (this exemption does not apply to combination foods).

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(2). Nuts, seeds, nut/seed butters (this exemption does not apply to combination foods that contain nuts, seed or nut/seed butters such as peanut butter and crackers, trail mix, etc).

(3). Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat, and

(4). Seafood with no added fat.

b. Saturated Fat: Competitive foods shall have less than ten percent (10%) of total calories from saturated fat per item as packaged or served.

Exemptions to the saturated fat standard are granted for:

(1) Reduced fat cheese and part-skim mozzarella cheese (this exemption does not apply to combination foods).

(2) Nuts, seeds, nut/seed butters, (This exemption does not apply to combination foods that contain nuts, seed or nut/seed butters such as peanut butter and crackers, trail mix, etc); and

(3) Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat.

c. Trans Fat: Competitive foods must have zero grams (0g) of trans fat per item as packaged or served].

3. Standard 3: Sugar.

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a. [Total sugar shall be no more than thirty-five percent (35%) of weight per item as packaged or served]. ~~Snacks and food items shall provide no more than 35% of calories from total sugars per portion or as packaged.~~

~~b. Exceptions:~~ Exemptions to the sugar standard are provided for:

(1) Dried whole fruits or vegetables;

(2) Dried whole fruit or vegetable pieces;

(3) Dehydrated fruits or vegetables with no added nutritive sweeteners; and

(4) Dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes.

~~(1) 100% fruits and fruit juices in all forms without added sugars.~~

~~(2) 100% vegetables and vegetable juices without added sugars.~~

~~(3) Unflavored nonfat and low-fat (1.0%) milk and yogurt.~~

~~(4) Flavored nonfat and low-fat (1.0%) milk with no more than 22 grams of total sugars per 8-ounce serving.~~

~~(5) [Flavored nonfat and low-fat yogurt with no more than 30 grams of total sugars per 8-ounce serving.]~~

4. Standard 4: Sodium.

a. [Sodium content in snacks shall be no more than 230 mg per item as packaged or served including the sodium content in any accompaniments, such

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as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standards. Effective July 1, 2016, the sodium standard shall be no more than 200 mg per item as packaged or served including the sodium content in any accompaniments]. ~~Snack items shall meet a sodium content limit of 200 milligrams or less per portion or as packaged.]~~

b. ~~Entrée items sold à la carte shall have no more than 480 mg of sodium per item as packaged or served, including the sodium content in any accompaniments, such as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standards, unless they meet the exemption for NSLP/SBP entrée items in 8VAC20-740-30 C 3, and must meet all of the other nutrient standards in this section. À la carte entrée items recognized as being components of the school breakfast program or school lunch program meal patterns that are not part of the planned reimbursable menu shall meet a sodium content of 480 milligrams or less per portion. Portion sizes for à la carte entrée items shall not be larger than the comparable portion size for NSLP entree items.~~

5. ~~Standard 5: Foods of minimal nutritional value. In accordance with 8VAC20-290-10 and 7 CFR Part 210, all foods of minimal nutritional value (FMNV) as defined in 8VAC20-740-10 shall be prohibited from being sold to students on school grounds during regular school hours.]~~

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8VAC20-740-40. Implementation and compliance.

A. Each local school board shall **[incorporate and]** adopt these nutrition guidelines as **[part of a compulsory component]** of **[the ~~its existing~~ Divisionwide Local wWellness Policy]** mandated by federal regulation for all Local Education Agencies that participate in the national school lunch program]. **[The nutrition guidelines for competitive foods, together with the other required components of the Local Wellness Policy, 1) establish and identify school division leadership with the authority to enforce the Local Wellness Policy throughout the school campus, 2) establish specific goals for nutrition promotion, nutrition education, physical activities, and other school-based activities that promote wellness; and 3) establish policies that address marketing and advertising of only foods that meet the nutrition guidelines for competitive foods, serve to promote student health, prevent childhood obesity and combat problems associated with poor nutrition and physical inactivity.]**

[B. Recordkeeping Requirements: The recordkeeping requirement is essential to the integrity of the competitive food standards. To determine whether a food item is an allowable competitive food, the local educational agency must assess the nutritional profile of the food item. Records must be retained to document compliance. (e.g., the nutrition labels, receipts, and/or product specifications).

1. Local Educational Agencies:

DRAFT REVISIONS

(Updated May 13, 2014)

Yellow Highlights = New text **Blue Highlights = Deleted Text**

a. Shall be responsible for maintaining records documenting compliance with the competitive food nutrition standards for food available for sale in areas that are outside of the control of the school nutrition programs operation.

b. Shall be responsible for ensuring any organization/school activity designated as responsible for food service at the various venues in the school (other than the school nutrition programs) maintains records documenting compliance with the competitive food nutrition standards.

c. Shall designate an individual at the division or school level to monitor and ensure compliance of this regulation in all areas that are outside the control of the school nutrition programs operation. This designee shall not be school nutrition personnel.

2. The School Food Authority shall be responsible for maintaining records for foods served under the auspices of the nonprofit school nutrition programs account].

3. The Department of Education shall ensure the local education agencies and school food authorities comply with these nutrition standards. Non-compliance shall require corrective action.

~~B. Each local school board shall submit annually to the Department of Education the School Health Advisory Board (SHAB) Progress Report as required by § 22.1-275.1 of the Code of Virginia. This report shall include a status report on the development and~~

DRAFT REVISIONS

(Updated May 13, 2014)

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~~implementation of the Local Wellness Policy. This report shall be used by the
Department of Education to monitor compliance with this chapter.~~



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Re-Proposed Regulation Agency Background Document

Agency name	BOARD OF EDUCATION
Virginia Administrative Code (VAC) citation	<u>8 VAC 20-740</u>
Regulation title	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)
Date this document prepared	May 13, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being re-proposed in this regulatory action.

These regulations (8 VAC 20-740) are being re-proposed. The legislation requiring them (SB 414, 2010) requires the nutrition guidelines to be periodically reviewed by the Board of Education to ensure they remain current, science-based, and consistent with any changes to the federal laws or regulations on competitive foods.

In light of this requirement and the comments received at both the public hearing conducted on October 24, 2013, and during the public comment period, and with the release of the United States Department of Agriculture (USDA) interim 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)* on June 28, 2013, the proposed regulation was reviewed and revised to align with the USDA interim final rule, *Smart Snacks in Schools*. Due to the significant changes in the language of the initially proposed regulation, the regulation is being re-proposed.

This regulation, required to be developed by Section 22.1-207.4, *Code of Virginia*, and pursuant to requirements in SB 414 (2010) will:

1. Establish nutritional guidelines for all “competitive 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.
2. Be based on the Institutes of Medicine’s (IOM) Recommended Standards for Competitive Foods in Schools.
3. Require periodic review by the Board of Education with assistance from the Department of Health to ensure the nutritional guidelines developed as part of the regulations remain current, science-based, and consistent with any changes to federal law or regulations on competitive foods.
4. Require all local school boards to adopt the state nutritional guidelines as part of their existing wellness policies.

These required regulations are intended to implement nutritional standards for competitive foods available for sale in the public schools in response to concerns about increasing childhood obesity and its effects and the general goal of increasing the nutritional quality of foods offered in the school setting.

Acronyms and Definitions

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

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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*.

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

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

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

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. 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 and breakfast programs and

afterschool snack program establish nutrition standards for school meals. In addition, federal regulations require every school division to have wellness policies that address nutrition and physical activity; the content and implementation of these local wellness 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.

Statewide nutritional guidelines for competitive foods available for sale to students on the school campus during the school day of any public school, and other public School Food Authorities such as Residential Child Care Institutions, would strengthen the local wellness policies and help address some of the factors that impact childhood obesity as well as increase the nutritional quality of foods offered in the school setting.

Re-Proposed Substance

Please briefly identify and explain the new substantive provisions, substantive changes to existing sections, or both where appropriate, being introduced in the re-proposed regulation.

The language in the re-proposed regulation is aligned with new 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. All references to beverages are eliminated. The re-proposed regulation contains changes in the following sections:

- 8VAC 20-740-10 - Definitions: modified several, added new definitions and deleted some.
- 8VAC 20-740-20 - Applicability: added item clarifying non-applicability of food available for sale to adults only.
- 8VAC 20-740-30 - Nutrition Standards: reworded and expanded language to align with the federal regulation; added section on General Standards, General Exemptions and Accompaniments.
- 8 VAC 20-740-40 - Implementations and Compliance: expanded to address recordkeeping, oversight and compliance/noncompliance.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The initially proposed regulations were presented to the Board of Education for first review on June 23, 2011. The Board accepted these proposed regulations for first review and authorized the Department of Education to proceed with the next steps of the regulatory process under the Administrative Process Act (APA), including a public comment period and a public hearing.

On June 28, 2013, the United States Department of Agriculture (USDA) issued the interim final rule, *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 interim final rule amends the National School Lunch Program and School Breakfast Program regulations to establish nutrition standards for all foods available for sale to students in schools during the school day on the school campus other than meals reimbursed under programs authorized by the Richard B. Russell

National School Lunch Act and the Child Nutrition Act of 1966. These new regulations are effective July 1, 2014.

SB 414 requires the guidelines to be periodically reviewed by the Board of Education to ensure they remain current, science-based, and consistent with any changes to the federal laws or regulations on competitive foods. In light of this requirement, and the comments received at both the public hearing conducted on October 24, 2013, and during the public comment period, this proposed regulation was reviewed and revised to align with the USDA interim final rule, *Smart Snacks in Schools*, to increase clarity and prevent conflicting regulations.

Nutritional standards for competitive foods can 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 reduce fat, sugars, and sodium. Federal regulations governing the national school lunch program, school breakfast program, and afterschool snack program establish nutrition standards for school meals/snacks, and strengthened federal nutrition standards governing competitive foods were published on June 28, 2013, and become 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.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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. This regulation aligns 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 regulation would apply to all public school divisions, public schools, and all public school food authorities (SFAs) in the Commonwealth of Virginia.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **Catherine Digilio Grimes, Director of School Nutrition Programs, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, (804) 225-2074, fax (804) 786-3117, email schoolnutritionprograms@doe.virginia.gov.**

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period. The public comment period will be established later in the regulatory process.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>The impact on the Department of Education to develop and implement these regulations is not expected to be significant and can be absorbed with existing staff. It is expected that the department will have to provide ongoing staff support and technical assistance to divisions in the implementation of these regulations.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>It is anticipated that the adopted regulations will impact all school divisions 1) administratively, as they will be required to adopt the new state nutritional guidelines as part of their required local wellness policies, ensure compliance and maintain records; and 2) possibly financially, as they change the food offerings on the school campus during the school day to meet the adopted nutritional guidelines. Projected cost impact unknown.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Students in the public schools and their parents. Local school personnel, particularly in individual schools. Food purveyors who conduct business with schools.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses</p>	<p>1.3 million public school students, 132 school divisions and approximately 1,900 public schools. Estimate of the number of food purveyors/small</p>

<p>affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>businesses unknown.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Projected costs unknown. The proposed regulations could impact current competitive food items sold to schools for resale to students as they may not meet the nutrition standards and may have some negative consequences on revenues for schools. Alternative products that comply with the proposed nutritional guidelines may have to be developed or offered and the cost may be higher. Vendors and manufacturers are changing their nutritional profile of the items offered to meet the new federal standards nationwide which will help keep costs of products reasonable.</p> <p>Additional nutrient analysis may have to be conducted on current and future food items to ensure compliance with the nutritional guidelines.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Healthier school eating environment and improved student health. Thus, students throughout the Commonwealth will likely consume 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.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

None. The regulations are required by statute to be developed.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

None. The regulations are required by statute to be developed.

Public comment from Previous Proposed Stage

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

	Commenter	Comments	Agency Response
1.	Deborah Zeller, President of Virginia Association of School Nurses, Inc. (VASN)	<ul style="list-style-type: none"> • VASN support the proposed regulation as a valuable wellness strategy, which promotes a healthy school environment and aids in the prevention of overweight and obesity in Virginia's children and youth. VASN urges the Board of Education to adopt these Regulations. • Comments included a summary of the proposed regulations • CDC's School Health policies and practices Study 2012 show some advances by school districts in prohibiting the offering of junk food during the school day. However, there is still room for improvement. • Virginia Youth Survey on Obesity and physical activity and nutrition show disappointing trends in the weight of Virginia's Youth. 17% of Virginia Students are overweight and 11% are obese. • Virginia must improve the nutritional environment for children in schools and embrace nutritional requirements to fight obesity and overweight. • Establishing nutritional guidelines for competitive foods based on the Institute of Medicine's standards addresses a gap in the implementation of wellness policy at the local level and promoting a nutritional environment that assists student in making healthy choices. 	Thank you for the support
2	Brad Copenhaver, Director Governmental Affairs, Virginia Agribusiness Council	<ul style="list-style-type: none"> • Because the beverages are already exempted from these regulations, there is no need to include unflavored and flavored milk in the list of exceptions to the proposes rule • Cheese is a nutrient rich product the students in Virginia school can rely on as a healthy snack option. Align these proposed regulations to the newly released USDA Federal interim final rule especially as it relates to the exemptions for "reduced-fat cheese and part skim Mozzarella cheese". 	<p>The inconsistency related to beverages will be corrected before the regulation is final.</p> <p>The Agency agrees that reduced and part skim cheeses can be a healthy snack option.</p>
3	Cary Frye, Vice President, Regulatory and	<ul style="list-style-type: none"> • Dairy products are an important source of nutrients for children • Children are not consuming enough dairy 	The inconsistency related to beverages will be corrected before the

	Committer	Comments	Agency Response
	Scientific Affairs, International Dairy Food Association (IDFA)	<ul style="list-style-type: none"> Encourage Virginia to adopt nutrition standards that are in line with the New USDA's interim Final rule for nutrition standards for all foods and beverages sold in schools Since the legislation that mandated the release of this proposed regulations state the nutrition standards would apply to competitive foods excluding beverages. Since milk is a beverage, the regulations should not apply to milk and any reference to milk should be removed from the proposed regulation. 	regulation is final.
	Lindsey Reames Assistant Director Governmental Affairs, Farm Bureau - Virginia	<ul style="list-style-type: none"> The proposed regulation may have an unintended negative effect on Virginia's dairy industry. Beverages should not be included in this regulation. Therefore we recommend language that excludes beverage (including milk) from the entire regulation be retained in the final rule. Align the proposed regulations the newly released USDA Federal interim final rule especially as it relates to the exemptions for "reduced-fat cheese and part skim Mozzarella cheese". 	<p>The inconsistency related to beverages will be corrected before the regulation is final.</p> <p>The Agency agrees that reduced and part skim cheeses can be a healthy snack option.</p>
	Eric Paulson Virginia State Dairymen's Association (VSDA)	<ul style="list-style-type: none"> VSDA shares the goals behind the proposed regulation Any regulation that aims at improving the students' nutrient intake should promote dairy consumption. Correct the internally inconsistency in the proposed regulation related to milk. Since the legislation that mandated the release of this proposed regulations state the nutrition standards would apply to competitive foods excluding beverages. Since milk is a beverage, the regulations should not apply to milk and any reference to milk should be removed from the proposed regulation. Language excluding beverages from the entire regulation should be retained in the final rule and any language exempting milk of any type form the sugar standard should be stricken. Modify the proposed regulation to include an exemptions from the fat standard for reduced fat cheese and part skim mozzarella cheese identical to the corresponding exemptions in the federal interim final rule for competitive foods 	<p>The inconsistency related to beverages will be corrected before the regulation is final.</p> <p>The Agency agrees that reduced and part skim cheeses can be a healthy snack option.</p>
	Debbie Shiflett, President, School Nutrition Association of Virginia (SNA-VA)	<ul style="list-style-type: none"> Expressed support for the proposed regulation with some recommend changes Conform the Virginia regulations to the newly released USDA federal regulation It would be burdensome and illogical for schools to operate under two different sets of regulations for the same foods. Reiterate the need for flexibility and simple regulation that are consistent with the national meal 	The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools)</i>

	Commenter	Comments	Agency Response
		<p>patter guidelines in order to limit the burden school division may face in implantation and food purchase</p> <ul style="list-style-type: none"> • SNA believes that school Nutrition programs in the school Division should be the primary food provider within the school building and throughout campus • Any product that can be used as part of a reimbursable lunch (that must meet the established nutrient standards established by USDA to be include as a component of the lunch program), should be able to be sold as a competitive food without further restriction. • SNA-VA also expressed concerns with few items in the federal regulation addressing nutrition standards for competitive foods that they hope will be changed in the final rule issued by USDA. SNA-VA urges the Board of Education to revise the Virgin regulations to be in line with the new federal regulations 	<p><i>rule) published on June 28, 2013.</i></p>
	<p>Dr. Becky Domokos-Bays, RD, SNS Director, School Nutrition Programs, Alexandria City Public Schools</p>	<ul style="list-style-type: none"> • Separate state standards are not needed. Federal competitive foods regulations should govern school nutrition programs. The committee can and should take great pride in the nutrition programs offered to Virginia's children. • The federal competitive foods regulations are set to be implemented in July 2014. These rules mandate nutrition requirements of competitive foods and beverages for calories, fat and saturated fat, sugar and sodium and portion sizes. There are also local wellness policies as mandated since 2006 that cover competitive food sales in schools. If Virginia implements separate standards, our programs will potentially be regulated by 3 sets of standards for the same food and beverage items! Imagine running a business in this manner. It is not a rational or financially feasible option and does not help children • There is a business side to school nutrition as well that must be recognized. Our programs are expected to be self-sustaining, receiving no school board operating funds. We earn our way, paying for salaries, benefits, food, supplies, etc. Some divisions pay indirect costs to support the general operating funds 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Andrea Early, School Nutrition Director, Harrisonburg City Public Schools</p>	<ul style="list-style-type: none"> • Withdraw the state level requirements knowing that federal rules that will effectively meet the objectives of the committee are forthcoming. • The majority of school nutrition programs in Virginia serve meals through the National School Lunch Program and are already operating under strict federal nutrition standards, including recently revised meal pattern requirements. • New federal competitive foods regulations are set to be implemented in July 2014. These rules mandate nutrition requirements for competitive foods and 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School</i></p>

	Commenter	Comments	Agency Response
		<p>beverages for calories, fat and saturated fat, sugar and sodium and portion sizes. These rules apply not only to a la carte foods sold by school nutrition programs, but also to all foods sold during the school day. The federal standards are based on sound science and will be consistent across the country. This allows vendors to develop products that meet requirements of all school divisions. Can you imagine needing to develop one product for Virginia, one for North Carolina, etc.?</p> <ul style="list-style-type: none"> • If Virginia implements separate standards, our programs will potentially be regulated by two different sets of standards for the same food and beverage items. 	<p><i>(Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Nina Goggin, Industry Representative School Nutrition Association of Virginia (SNA-VA)</p>	<ul style="list-style-type: none"> • Please make state regulations the same as Federal regulations. • Being the Broker representing the manufacture and the liaison to school food service in Virginia. Implementing three separate standards would drive up food cost for the manufactures and then the schools would incur those costs. One set rules is needed. 	<p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Nina Goggin, Infusion Sales Group</p>	<ul style="list-style-type: none"> • Align state rules with federal rules. • As a food broker representing the manufacture as the liaison between the distributor, and the school. I am asking that you consider a one set rule. Having multiple rules would drive up cost of food products, therefore the school would incur those higher cost 	<p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Randy Herman, SNS, DTR, Director, School Nutrition Programs, Louisa County Public Schools</p>	<ul style="list-style-type: none"> • Separate state standards are not needed. Federal competitive foods regulations should govern school nutrition programs • The federal competitive foods regulations are set to be implemented in July 2014. These rules mandate nutrition requirements of competitive foods and beverages for calories, fat and saturated fat, sugar and sodium and portion sizes. There are also local wellness policies as mandated since 2006 that cover competitive food sales in schools. If Virginia implements separate standards, our programs will potentially be regulated by 3 sets of standards for the same food and beverage items! • School nutrition has always had at its core the mission of providing healthy meals to students, and research continues to support that school meals are healthier than meals brought from home, and that 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>

	Commenter	Comments	Agency Response
		<p>students who eat school meals have healthier weights than those who do not.</p> <ul style="list-style-type: none"> For the success of our programs, we also need to maintain the state regulations regarding time and place 	
	<p>Jane C. Haley, SNS, Director, School Nutrition Programs, Williamsburg-James City County Public Schools</p>	<ul style="list-style-type: none"> Separate state standards are not needed. Federal competitive foods regulations should govern school nutrition programs. The federal competitive foods regulations are set to be implemented in July 2014. These rules mandate nutrition requirements of competitive foods and beverages for calories, fat and saturated fat, sugar and sodium and portion sizes. There are also local wellness policies as mandated since 2006 that cover competitive food sales in schools. If Virginia implements separate standards, our programs will potentially be regulated by 3 sets of standards for the same food and beverage items. For the success of our programs, we also need to maintain the state regulations regarding time and place 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule)</i> published on June 28, 2013.</p>
	<p>Lisa Landrum, Director, School Nutrition Programs, Goochland County Schools Nutrition Program</p>	<p>Consider aligning the Virginia standards to Federal standards.</p>	<p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule)</i> published on June 28, 2013.</p>
	<p>Edwina Forrest, Virginia Beach City Public Schools</p>	<ul style="list-style-type: none"> One set rule needed. Please make state regulations consistence with federal regulations. 	<p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule)</i> published on June 28, 2013.</p>
	<p>Ed Tuttle, Director, School Nutrition Programs, Roanoke County Public Schools</p>	<ul style="list-style-type: none"> Adopt the Federal regulations for competitive foods. We would like one set of rules/regulations Being a self-supporting enterprise in a much regulated environment is in itself a challenge. We have always provided healthy meals for our students, but due to our demographic, 3 out of 4 students must pay for their meals. Due to our lower free and reduced population, we must augment our reimbursable meals with a la carte sales to remain 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program:</i></p>

	Commenter	Comments	Agency Response
		<p>profitable. The Healthy, Hunger-Free Kids Act of 2010 has come with its own set of challenges, especially concerning maintaining participation. There needs to be one set of regulations on school meals and competitive foods that we can understand and learn how to implement. We need to re-educate the public and move forward. We have had local wellness policies in effect since 2006. Virginia has their own regulations and now the Federal government is proposing additional regulations.</p>	<p><i>Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Shelton Williams, Isle of Wight Co. Schools - Cafeteria Manager CES</p>	<ul style="list-style-type: none"> • Federal competitive foods regulation should govern school nutritional programs. • In our division (as like many others), we have observed an increase in food cost and a decrease in participation since the enactment of the Healthy Hunger Free Kids Act passed in December 2010. It is my opinion that following another set of guidelines set by the state for the same foods and beverages would devastate our school lunch programs. 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Debbie Paschall, Program Administrator for the Child Nutrition Program, Newport News Public Schools</p>	<ul style="list-style-type: none"> • Separate states standards are not needed. Federal competitive foods regulations should govern school nutrition programs. • On the business side, our programs must remain financially healthy. Our programs are expected to pay salaries, benefits, food, equipment, supplies, etc. In our district, we also pay indirect costs to support the general operating funds. • The federal competitive foods regulations are set to be implemented in July 2014, which will mandate the nutrition requirements of competitive foods and beverages for calories, fat and saturated fat, sugar and sodium along with portion sizes. These rules apply not only to a la carte foods sold by the school nutrition programs, but also to all foods sold during the school day. If Virginia implements separate standards, our programs will potentially be regulated by 3 sets of standard for the same food and beverage items. This will drive up our food costs, as manufactures will have to make different products that meet Virginia's standard but not necessarily other states standards. 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Chapman Slye, Director, School Nutrition Programs, Stafford County Public Schools</p>	<ul style="list-style-type: none"> • It is critical that the Competitive Food Guidelines for our state be the same as the Federal Guidelines. The new Competitive Food Guidelines are welcome and hopefully will complement the new meal standards. • If the Virginia develops different standards than the 	<p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program:</i></p>

	Commenter	Comments	Agency Response
		<p>Federal Guidelines following all the requirements, communicating them and finding approved products would be extremely difficult and confusing and costly</p> <ul style="list-style-type: none"> • Strongly recommend that the responsibility of implementation and monitoring compliance of these guidelines be the responsibility of the district Superintendent not a requirement run through the meal programs. • I hope monetary incentives for compliance or fiscal penalties for non compliance for a division will be considered to improve success. • Utilizing the School • Health Advisory Committee including high school students as part of the monitoring team will increase buy in and success. • For the success of our programs continue to require that no competitive food or beverages be sold during the meal periods anywhere accessible to students other than the School Lunch and Breakfast Programs 	<p><i>Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Karen Arthur, Director, School Nutrition Programs, Bedford County Public Schools</p>	<ul style="list-style-type: none"> • Federal competitive foods regulations should govern school nutrition programs. • Like most other school divisions in the state of Virginia receive no local funding from our counties or school divisions. We are expected to pay all of our own bills, employee salaries, employee benefits and any other expenses that we incur. We do this only from the funds that we collect in our school cafeterias each day, federal reimbursement and the small amount of state reimbursement that we receive. The Healthy Hunger Free Kids Act (HHFKA) of December 2010 imposed stringent changes to School Nutrition Programs. The changes that were made to our school meals in order to meet the required regulations resulted in a 6% decrease in lunch participation for my division. A decrease in participation results in a decrease in funds generated for the program • The focus of school nutrition programs is and should continue to be providing healthy choices to students not trying to ensure that three different sets of regulations are being met for competitive food sales. 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Greg Beamer, Director, School Nutrition Programs, Culpeper County Public Schools</p>	<ul style="list-style-type: none"> • My recommendation is to have one standard from the federal level for our competitive foods sold in our schools. • The federal competitive foods regulation starts in July 2014 from the Healthy Hunger Free Kids Act (HHFKA) that was passed in 2010. These rules mandate nutrition requirements for competitive foods and beverages for calories, fat, saturated fat, sugar, sodium, and portion sizes. These rules apply not only to a la carte foods sold by school nutrition 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All</i></p>

	Commenter	Comments	Agency Response
		<p>programs, but also to all foods sold during the school day. Having multiple standards to follow for the same agenda is confusing and redundant in my opinion.</p>	<p><i>Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Cathy Alexander, Director, School Nutrition Programs, Newport News Public Schools</p>	<ul style="list-style-type: none"> • Separate state standards are not needed. federal competitive foods regulations should govern school nutrition programs • The federal competitive foods regulations are set to be implemented in July 2014. These rules mandate nutrition requirements of competitive foods and beverages for calories, fat and saturated fat, sugar and sodium and portion sizes. There are also local wellness policies as mandated since 2006 that cover competitive food sales in schools. • If Virginia implements separate standards, our programs will potentially be regulated by 3 sets of standards for the same food and beverage items! This will drive up our food costs, as manufacturers will have to make different products that meet Virginia’s standards and no other states. • 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Paul E. Kelly, Director of School Nutrition Services, Henrico County Public Schools</p>	<ul style="list-style-type: none"> • Virginia School Nutrition Programs must follow the USDA and the State Department of Education mandates on competitive foods. • Virginia School Nutrition Programs must follow the USDA and the State Department of Education mandates on competitive foods. In July of 2014, the federal competitive foods regulations are set to be implemented with additional mandates on calories, fat, saturated fat, sugar and sodium along with portion size. To add another complex set of regulations on foods sold is not going to improve what is already in place. That could also prevent our programs from being self-sustaining, which then could result in a financial burden on our local School Boards. Only 4.5 cents comes from the state for every lunch served. Today, those 4.5 cents cannot even purchase a package of whole grain crackers. • The Healthy, Hunger-Free Kids Act was passed by Congress and became law in 2010. It was implemented in 2012 by the USDA. Because of this new law, in the first month alone, 18,000 students did not participate in lunch causing a substantial loss in revenues for the Henrico School Nutrition Program. With the Virginia Board of Education implementing additional regulations on food sold in our schools, there is a concern that these regulations could have a major impact on the ability of our schools to stay solvent. • 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule) published on June 28, 2013.</i></p>
	<p>Gerald Lehman, Director of Food & Nutrition Service,</p>	<ul style="list-style-type: none"> • The Federal competitive foods regulations should govern school nutrition programs. • I served on the DOE competitive food task force, 	<p>State regulations required by legislation (SB414).</p>

	Commenter	Comments	Agency Response
	Rockingham County Public Schools	<p>assisting in the development of the standards as the Public Policy Chair of the School Nutrition Association of Virginia at the time of the drafting (2011). My remembrance of the conversations of the stake holders involved in the task force was that there was a strong desire to have the Virginia standards be aligned with the Federal standards. Beginning in July 2014, my belief is that the following three outcomes can be satisfied:</p> <ul style="list-style-type: none"> – Districts who receive federal reimbursement will need to comply with strict federal standards (very similar to proposed state standards, but different, none the less). – State legislators should recognize that the intent of the state regulations are being met by federal standards. – Students in many schools will be limited in their access to “junk food”. <p>The most efficient, common sense way to achieve this is to have the Virginia standards aligned with the federal standards.</p> <ul style="list-style-type: none"> • Our program is self-supporting, in that our department receives no local financial assistance, just the paying customer and the federal reimbursement. We do receive just \$.045 per lunch of state assistance, but this does not even pay for a pack of crackers. Any state restriction of a la carte items that can or cannot be sold in cafeterias (more stringent than the federal standards) are not acceptable and would result in further financial losses for our program. 	<p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule)</i> published on June 28, 2013.</p>
	Sandy Stokes, Field Supervisor, School Nutrition Programs, Chesterfield County Public Schools	<ul style="list-style-type: none"> • Align the State regulation with the Federal regulation. It is only logical that we follow one set of regulations as opposed to one set by federal, one by state and an additional one set by the local wellness policies, which in many cases will have to be rewritten after the federal mandates are released • Trying to find products to meet all three will be increasingly difficult and be more costly because manufacturers will have to develop several different options for the same product to meet different regulations. • Any products that are approved to be sold as a part of the national school breakfast or lunch should have no further restrictions when sold as an ala carte product. A food that is healthy enough to be part of the lunch program should be healthy enough for a product that is served as a competitive food. • “Enforcing the new mandates” in other areas of the school campus is a major concern for all school nutrition program. The responsibility of implementation and monitoring compliance of these guidelines outside of the cafeteria should not fall on 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule)</i> published on June 28, 2013.</p>

	Commenter	Comments	Agency Response
		the School nutrition programs.	
	April Plummer, DTR, SNS Director of the School Nutrition Program in Fauquier County Public Schools	<ul style="list-style-type: none"> • Virginia proposed regulations for competitive foods sold match the federal regulations. • Our program must function as an enterprise fund and remain a financially healthy program primarily from the exchange of money from food sales and not federal funding. Regulations governing school meal programs have been costly and have jeopardized program sustainability. I believe I speak for my colleges across the state when I say that nutritionally balanced meals are the focal point of our programs, however, reasonable a la carte sales are vital to our financial independence. Rising food costs, quality labor and benefit costs, training expenses, equipment replacement, and indirect costs are choking our programs. • It will be arduous and costly for Virginia school nutrition programs to operate under a separate set of regulations concerning a la carte sales. 	<p>State regulations required by legislation (SB414).</p> <p>The proposed regulations were reviewed and revised to align with the USDA interim final rule, <i>National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School (Smart Snacks in Schools rule)</i> published on June 28, 2013.</p>

Family impact

Please assess the impact of the proposed 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.

Students throughout the Commonwealth will likely consume 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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact.

*Please list separately (1) all differences between the **proposed** regulation and this **re-proposed** regulation in **chart #1**, and (2) **all changes** being proposed in **chart #2a/b**.*

Chart #1

Current section number	Proposed new section number, if applicable	Proposed requirement	Re-Proposed requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
8VAC20-740-10. <u>Definitions</u>		"After school activities" means activities that occur on school grounds	"After school activities" means activities that occur on the school campus after the regular	To align with federal regulations, and to provide clarity.

		after regular school hours.	school day.	
<u>8VAC20-740-10. Definitions</u>			“Combination foods” means products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein or grains.	New definition added. To align with federal regulations, to provide clarity, and in response to public comment.
<u>8VAC20-740-10. Definitions</u>		<p>"Competitive food" means any food, excluding beverages, sold to students on school grounds during regular school hours that is not part of the reimbursable meals served through the National School Lunch Program (NSLP), School Breakfast Program (SBP), or Afterschool Snack Program (ASP).</p> <p>Competitive food includes all foods sold to students:</p> <ol style="list-style-type: none"> 1. In school cafeterias as a la carte items not offered as a component of the planned reimbursable menu. 2. In vending machines located on school grounds during regular school hours. 3. As fundraisers held on school grounds during regular school hours. 4. In school snack bars on school grounds during regular school hours. 	<p>"Competitive food" means all food, available for sale to students on the school campus 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.</p> <p>Competitive food includes all food available for sale to students:</p> <ol style="list-style-type: none"> 1. In school cafeterias as à la carte items. 2. In vending machines located on the school campus during the school day. 3. As fundraisers held on the school campus during the school day. 4. In school snack bars on the school campus during the school day. 5. In school stores operated on the school campus during the school day by the school, a student association, or other school-sponsored organization. 6. At school activities such as special 	To align with federal regulations, to provide clarity, and in response to public comment.

		<p>5. In school stores operated on school grounds during regular school hours by the school, a student association, or other school-sponsored organization.</p> <p>6. At school activities such as special fundraisers, achievement rewards, classroom parties, school celebrations, classroom snacks, or school meetings held on school grounds during regular school hours.</p>	<p>fundraisers, achievement rewards, classroom parties, school celebrations, classroom snacks, or school meetings held on the school campus during the school day.</p> <p>7. In culinary education programs where food prepared as part of the educational curriculum is sold to students (this does not apply if food is sold to adults only).</p>	
<p><u>8VAC20-740-10. Definitions</u></p>			<p>Entrée item means an item that is either: (a) A combination food of meat or meat alternate and whole grain rich food; or (b) A combination food of vegetable or fruit and meat or meat alternate; or (c) A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky).</p>	<p>New definition added. To align with federal regulations, to provide clarity, and in response to public comment.</p>
<p><u>8VAC20-740-10. Definitions</u></p>		<p>"Food of minimal nutritional value" or "FMNV" means foods and beverages that are restricted by the U.S. Department of Agriculture (7 CFR 210.11(a)(2) and subsection (a) of Appendix B to 7 CFR Part 210 Definition) unless specifically exempted by USDA. The federal</p>		<p>Definition deleted. No longer applicable. To align with federal regulations.</p>

		<p>FMNV definition is limited to the following four specific categories of foods and beverages:</p> <ol style="list-style-type: none"> 1. Soda water (any carbonated or aerated beverages, i.e., beverages that are labeled as "aerated" or that bubble and fizz for several minutes after opening). 2. Water ices (any frozen, sweetened water such as "...popsicles" and flavored ice with the exception of products that contain fruit, fruit juice, milk, milk ingredients, or egg ingredients other than egg whites). 3. Chewing gum (regular and sugarless). 4. Certain candies (regular and sugarless), including: <ol style="list-style-type: none"> a. Hard candy (e.g., sour balls, candy sticks, lollipops, starlight mints, after-dinner mints, sugar wafers, rock candy, cinnamon candy). b. Jellies and gums (e.g., gum drops, jelly beans, and jellied and fruit-flavored slices and shapes). c. Marshmallow candies, fondant, such as candy corn and soft mints, licorice, spun candy, and candy coated popcorn. 		
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<p><u>8VAC20-740-10. Definitions</u></p>		<p>"Regular school hours" means the same as the standard school day, as defined in 8VAC20-131-5, a calendar day that averages at least five and one-half instructional hours for students in grades 1 through 12, excluding breaks for meals and recess, and a minimum of three instructional hours for students in kindergarten. Regular school hours does not include school-related activities or events that occur either before or after the standard school day, such as clubs, yearbook, band and choir practice, student government, drama, childcare programs, interscholastic sporting events, school plays, band concerts, or other school-related programs.</p>		<p>Deleted and replaced with definition of school day and school campus. To align with federal regulations, to provide clarity, and in response to public comment.</p>
<p><u>8VAC20-740-10. Definitions</u></p>			<p>"School campus" means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.</p>	<p>New definition added to align with federal regulations, to provide clarity, and in response to public comment.</p>
<p><u>8VAC20-740-10. Definitions</u></p>			<p>"School day" means, for the purpose of competitive food standards implementation, the</p>	<p>New definition added to align with federal regulations, to provide clarity, and in response to</p>

			period from the midnight before, to 30 minutes after the end of the official school day.	public comment.
<u>8VAC20-740-10. Definitions</u>		"School Health Advisory Board" or "SHAB" means an entity formed according to the provisions of § 22.1-275.1 of the Code of Virginia that assists in the development of wellness policies as required by § 204 of Public Law 108-265 (42 USC § 1751 et seq.) and develops an annual report of activities that is required to be submitted to the Department of Education.	"School Health Advisory Board" or "SHAB" means an entity formed according to the provisions of § 22.1-275.1 of the Code of Virginia that assists in the development of wellness policies as required by § 204 of Public Law 108-265 (42 USC § 1751 et seq.) as amended.	Clarification
<u>8VAC20-740-10. Definitions</u>		"Wellness policy" means a policy required for public schools participating in a nutrition program authorized by the Richard B. Russell National School Lunch Act (42 USC § 1751 et seq.) or the Child Nutrition Act of 1966 (42 USC § 1771 et seq).	"Wellness policy" means a policy required for public schools participating in a nutrition program authorized by the Richard B. Russell National School Lunch Act (42 USC § 1751 et seq.) or the Child Nutrition Act of 1966 (42 USC § 1771 et seq.) that meets minimum standards designed to support school environments that promote student wellness.	Clarified definition of local wellness policies.
<u>8VAC20-740-10. Definitions</u>			"Whole grains" means grains that are made with enriched and whole grain meal or flour, in accordance with the most recent grains guidance from the U.S. Department of Agriculture Food and Nutrition Service.	New definition added. To align with federal regulations, to provide clarity, and in response to public comment.
<u>8VAC20-740-10. Definitions</u>			"Whole grain-rich" means products that contain at	New definition added.

			least 50 percent whole grains and the remaining grains in the product must be enriched.	
8VAC 20-740-20. Applicability. C.		C. This regulation shall apply to the nutritional content of food items excluding beverages sold to students on school grounds of any public school, during regular school hours. It shall include: <ol style="list-style-type: none"> 1. Foods sold to students in vending machines. 2. Foods sold to students as a la carte items in the school cafeteria. 3. Foods sold to students at snack bars and stores operated by the school, a student association, or other school-sponsored organization. 4. Foods sold to students at school activities such as fundraisers. 	C. This regulation shall apply to the nutritional content of food items available for sale to students on the school campus of any public school, and other public SFAs such as Residential Child Care Institutions, during the school day. It shall include: <ol style="list-style-type: none"> 1. Foods available for sale to students in vending machines. 2. Foods available for sale to students as à la carte items in the school cafeteria. 3. Foods available for sale to students at snack bars and stores operated by the school, a student association, or other school-sponsored organization. 4. Foods available for sale to students at school activities such as fundraisers. 5. Foods available for sale to students by culinary or other educational programs. 	To align with federal regulations, to provide clarity, and in response to public comment.
8VAC 20-740-20. Applicability. D.		D. This regulation shall not apply to the nutritional content of foods and beverages: <ol style="list-style-type: none"> 1. Provided through the National School Lunch, School Breakfast, and Afterschool Snack programs, as regulated by 7 CFR Part 210 and 7 CFR Part 220. 	D. This regulation shall not apply to the nutritional content of foods: <ol style="list-style-type: none"> 1. Provided as meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966. 2. Available for sale at snack bars, concession stands, or athletic events 	To align with definitions and federal regulations, to provide clarity, and in response to public comment.

		<p>2. Sold at snack bars, concession stands, or athletic events after regular school hours.</p> <p>3. Sold either during intermission or immediately before or after athletics events.</p> <p>4. Sold for school-related fundraising activities that take place off school grounds.</p> <p>5. Sold during activities that take place after regular school hours, such as clubs, yearbook, band and choir practice, student government, drama, sports practices, interscholastic sporting events, school plays, and band concerts.</p>	<p>after the school day.</p> <p>3. Available for sale either during intermission or immediately before or after athletics events scheduled after the school day.</p> <p>4. Available for sale for school-related fundraising activities that take place off the school campus.</p> <p>5. Available for sale during activities that take place after the school day, such as clubs, yearbook, band and choir practice, student government, drama, sports practices, interscholastic sporting events, school plays, band concerts, etc.</p> <p>6. Available for sale to adults only in areas not accessible to students.</p>	
8VAC 20-740-20. Applicability. E.			E. The requirements of this regulation supplement 8 VAC 20-290-10 and 8 VAC 20-580-10-100 which remain in effect.	To provide clarity.
<u>8VAC20-740-30. Nutrition standards</u>		<p>Competitive foods sold to students shall support the Dietary Guidelines for Americans by complying with the following nutritional standards: 1. Standard 1: Calories.</p> <p>a. Snack items shall be 200 calories or less per portion or as packaged.</p> <p>b. A la carte entree items shall not exceed calorie</p>	<p>A. The nutrition standards apply to all foods available for sale to students (a) outside the school meal programs; (b) on the school campus; and (c) at any time during the school day, and shall be consistent with the most recent Dietary Guidelines for Americans.</p> <p>B. General Standards: to be allowable, a competitive food must:</p> <p>1. Meet all of the competitive food nutrient</p>	<p>To align with federal regulations, provide clarity, and in response to public comment.</p> <p>Divided paragraphs into A through D and re-numbered the Nutrient standard section as E. Included General Standards and Accompaniments and modified the specific standards for calories, sugar,</p>

		<p>limits on comparable National School Lunch Program (NSLP) entrees. A la carte entree items shall not provide more calories or larger portion sizes than the comparable NSLP entree items. In accordance with 8VAC20-290-10, a la carte entree items for sale to students shall be limited to those entree items recognized as being components of the school breakfast program or school lunch program meal patterns.</p> <p>2. Standard 2: Fat.</p> <p>a. Snacks and food items shall meet the following criteria for dietary fat per portion or as packaged:</p> <p>(1) No more than 35% of total calories from fat.</p> <p>(2) Less than 10% of total calories from saturated fats.</p> <p>(3) Zero grams of trans fat.</p> <p>b. Exceptions: Nuts and seeds (allowed as combination products as long as other nutrient standards are met; the fat content will not count against the total fat content of the product).</p> <p>3. Standard 3: Sugar.</p> <p>a. Snacks and food items shall provide no more than 35%</p>	<p>standards and</p> <p>2. Be a grain product that contains 50 percent or more whole grains by weight or have as the first ingredient a whole grain (whole grain rich) or</p> <p>3. Have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or</p> <p>4. Be a combination food that contains ¼ cup of fruit and/or vegetable; or</p> <p>5. Contain ten percent (10%) of the Daily Value of a nutrient of public health concern based on the most recent Dietary Guidelines for Americans (i.e., calcium, potassium, vitamin D or dietary fiber) for the period through June 30, 2016. Effective July 1, 2016, this criterion is obsolete and may not be used to qualify as a competitive food; If water is the first ingredient, the second ingredient must be one of the food items above.</p> <p>C. General Exemptions:</p> <p>1. Fresh, canned, and frozen fruits or vegetables with no added ingredients except water, or in the case of fruit, packed in 100 percent juice, extra light, or light syrup are exempt from the nutrient standards.</p> <p>2. Canned vegetables that contain a small amount of sugar for processing purposes are also exempt.</p> <p>3. An entrée item offered as part of the national school lunch program</p>	<p>fat, and sodium to align with federal standards.</p>
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		<p>of calories from total sugars per portion or as packaged.</p> <p>b. Exceptions:</p> <p>(1) 100% fruits and fruit juices in all forms without added sugars.</p> <p>(2) 100% vegetables and vegetable juices without added sugars.</p> <p>(3) Unflavored nonfat and low-fat (1.0%) milk and yogurt.</p> <p>(4) Flavored nonfat and low-fat (1.0%) milk with no more than 22 grams of total sugars per 8-ounce serving.</p> <p>(5) Flavored nonfat and low-fat yogurt with no more than 30 grams of total sugars per 8-ounce serving.</p> <p>4. Standard 4: Sodium.</p> <p>a. Snack items shall meet a sodium content limit of 200 milligrams or less per portion or as packaged.</p> <p>b. A la carte entree items recognized as being components of the school breakfast program or school lunch program meal patterns that are not part of the planned reimbursable menu shall meet a sodium content of 480 milligrams or less per portion. Portion sizes for a la carte entree items shall not be</p>	<p>(under 7 CFR Part 210) or the school breakfast program (under 7 CFR Part 220) is exempt from all competitive food standards if it is offered as a competitive food on the day of, or the school day after, it is offered in the lunch or breakfast program. Exempt entrée items offered as a competitive food must be offered in the same or smaller portion sizes as in the lunch or breakfast program.</p> <p>4. Side dishes offered as part of the lunch or breakfast program and served à la carte must meet the nutrition standards in this section.</p> <p>D. Accompaniments: the accompaniments to a competitive food item must be included in the nutrient profile as a part of the food item served in determining if an item meets the nutrition standards for competitive food. The contribution of the accompaniments may be based on the average serving size of the accompaniment used per item.</p>	
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		<p>larger than the comparable portion size for NSLP entree items.</p> <p>5. Standard 5: Foods of minimal nutritional value. In accordance with 8VAC20-290-10 and 7 CFR Part 210, all foods of minimal nutritional value (FMNV) as defined in 8VAC20-740-10 shall be prohibited from being sold to students on school grounds during regular school hours.</p>		
8VAC20-740-30. Nutrition standards section E: Nutrient Standards		<p>1C. Nutrient Standards:</p> <p>1. Standard 1: Calories. Shall not exceed calorie limits on comparable National School Lunch Program (NSLP) entrees. A la carte entree items shall not provide more calories or larger portion sizes than the comparable NSLP entree items. In accordance with 8VAC20-290-10, a la carte entree items for sale to students shall be limited to those entree items recognized as being components of the school breakfast program or national school lunch program meal patterns.</p>	<p>E. Nutrient Standards:</p> <p>1. Standard 1: Calories.</p> <p>a. Snack items and side dishes sold à la carte shall be no more than 200 calories per items as served or as packaged, including the calorie content in any accompaniments, such as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standard.</p> <p>b. Entree items sold à la carte shall contain no more than 350 calories including the calorie content of any accompaniments, per item as served or as packaged, unless they meet the exemption for NSLP/SBP entrée items in section C above.</p> <p>c. The calories contained in any accompaniments must be included in the nutrient profile as a part of the item served.</p>	To align with federal regulations, to provide clarity, and in response to public comment.
8VAC20-740-30. Nutrition		<p>2. Standard 2: Fat.</p> <p>(1) No more than</p>	<p>a. Total Fat: Competitive foods shall contain no</p>	To align with federal regulations,

<p>standards Standard 2 Fat</p>		<p>35% of total calories from fat. (2) Less than 10% of total calories from saturated fats. (3) Zero grams of trans fat. b. Exceptions: Nuts and seeds (allowed as combination products as long as other nutrient standards are met; the fat content will not count against the total fat content of the product).</p>	<p>more than thirty-five percent (35%) of total calories from fat per item as packaged or served. Exemptions to the total fat standard are granted for: (1) Reduced fat cheese and part-skim mozzarella cheese (this exemption does not apply to combination foods). (2) Nuts, seeds, nut/seed butters (this exemption does not apply to combination foods that contain nuts, seed or nut/seed butters such as peanut butter and crackers, trail mix, etc). (3) Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat, and (4) Seafood with no added fat. b. Saturated Fat: Competitive foods shall be less than ten percent (10%) of total calories from saturated fat per item as packaged or served. Exemptions to the saturated fat standard are granted for: (1) Reduced fat cheese and part-skim mozzarella cheese (this exemption does not apply to combination foods). (2) Nuts, seeds, nut/seed butters (this exemption does not apply to combination foods that contain nuts, seeds or nut/seed butters such as peanut butter and crackers, trail mix, etc); and (3) Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat.</p>	<p>to provide clarity, and in response to public comment.</p>
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			c. Trans Fat: Competitive foods must have zero grams (0g) of trans fat per item as packaged or served.	
8VAC20-740-30. Nutrition standards Standard 3 Sugar		3. Standard 3: Sugar. Snacks and food items shall provide no more than 35% of calories from total sugars per portion or as packaged. b. Exceptions: Exemptions to the sugar standard are provided for: (1) 100% fruits and fruit juices in all forms without added sugars. (2) 100% vegetables and vegetable juices without added sugars. (3) Unflavored nonfat and low-fat (1.0%) milk and yogurt. (4) Flavored nonfat and low-fat (1.0%) milk with no more than 22 grams of total sugars per 8-ounce serving. (5) Flavored nonfat and low-fat yogurt with no more than 30 grams of total sugars per 8-ounce serving.	3. Standard 3: Sugar. a. Total sugar shall be no more than thirty-five percent (35%) of weight per item as packaged or served. Exemptions to the sugar standard are provided for: (1) Dried whole fruits or vegetables; (2) Dried whole fruit or vegetable pieces; (3) Dehydrated fruits or vegetables with no added nutritive sweeteners; and (4) Dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes.	To align with federal regulations, to provide clarity, and in response to public comment.
8VAC20-740-30. Nutrition standards Standard 4 Sodium		4. Standard 4: Sodium. Snack items shall meet a sodium content limit of 200 milligrams or less per portion or as packaged. A la carte entree items recognized as being components of the school breakfast program or school lunch	4. Standard 4: Sodium. a. Sodium content in snacks shall be no more than 230 mg per item as packaged or served including the sodium content in any accompaniments, such as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standards. Effective July 1, 2016,	To align with federal regulations, to provide clarity, and in response to public comment.

		<p>program meal patterns that are not part of the planned reimbursable menu shall meet a sodium content of 480 milligrams or less per portion. Portion sizes for a la carte entree items shall not be larger than the comparable portion size for NSLP entree items.</p>	<p>the sodium standard shall be no more than 200 mg per item as packaged or served including the sodium content in any accompaniments. b. Entrée items sold à la carte shall have no more than 480 mg of sodium per item as packaged or served, including the sodium content in any accompaniments, such as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standards, unless they meet the exemption for NSLP/SBP entrée items in 8VAC20-740-30, and must meet all of the other nutrient standards in this section.</p>	
<p>8VAC20-740-30. Nutrition standards Standard 5 Foods of Minimal Nutritional value</p>		<p>5. Standard 5: Foods of minimal nutritional value. In accordance with 8VAC20-290-10 and 7 CFR Part 210, all foods of minimal nutritional value (FMNV) as defined in 8VAC20-740-10 shall be prohibited from being sold to students on school grounds during regular school hours.</p>		<p>Deleted not applicable. To align with federal regulations.</p>
<p>8VAC20-740-40. Implementation and compliance</p>		<p>A. Each local school board shall adopt these nutrition guidelines as part of its existing local wellness policy. B. Each local school board shall submit annually to the Department of</p>	<p>A. Each local school board shall incorporate and adopt these nutrition guidelines as a compulsory component of the Divisionwide Local Wellness Policy mandated by federal regulation for all local education agencies that participate in the national</p>	<p>To align with federal regulations, to provide clarity, and in response to public comment.</p>

		<p>Education the School Health Advisory Board (SHAB) Progress Report as required by § 22.1-275.1 of the Code of Virginia. This report shall include a status report on the development and implementation of the local wellness policy. This report shall be used by the Department of Education to monitor compliance with this chapter.</p>	<p>school lunch program. The nutrition guidelines for competitive foods, together with the other required components of the Local Wellness Policy,</p> <ol style="list-style-type: none"> 1) establish and identify school division leadership with the authority to enforce the Local Wellness Policy throughout the school campus, 2) establish specific goals for nutrition promotion, nutrition education, physical activities, and other school-based activities that promote wellness; 3) establish policies that address marketing and advertising of only foods that meet the nutrition guidelines for competitive foods, serve to promote student health, prevent childhood obesity and combat problems associated with poor nutrition and physical inactivity. <p>B. Recordkeeping Requirements: The recordkeeping requirement is essential to the integrity of the competitive food standards. To determine whether a food item is an allowable competitive food, the local educational agency must assess the nutritional profile of the food item. Records must be retained to document compliance (e.g., the nutrition labels, receipts, and/or product specifications).</p> <p>1. Local Educational Agencies:</p> <ol style="list-style-type: none"> a. Shall be responsible 	
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			<p>for maintaining records documenting compliance with the competitive food nutrition standards for food available for sale in areas that are outside the control of the school nutrition programs operation.</p> <p>b. Shall be responsible for ensuring any organization/school activity designated as responsible for food service at the various venues in the school (other than the school nutrition programs) maintains records documenting compliance with the competitive food nutrition standards.</p> <p>c. Shall designate an individual at the division or school level to monitor and ensure compliance of this regulation in all areas that are outside of the control of the school nutrition programs operation. This designee shall not be school nutrition personnel.</p> <p>2. The School Food Authority shall be responsible for maintaining records for foods served under the auspices of the nonprofit school nutrition programs account.</p> <p>3. The Department of Education shall ensure the local education agencies and school food authorities comply with these nutrition standards. Non-compliance shall require corrective action.</p>	
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Summary

8VAC 20-740 Re-proposed Regulation Governing Nutritional Guidelines for Competitive Foods Available for Sale in the Public Schools

A. Applicability: all food items available for sale to students on the school campus of any public school, and other public School Food Authorities (SFAs) such as Residential Child Care Institutions, during the school day outside of the school meals programs.

B. General Standards – Must meet all nutrient standards **AND**

- Be a whole grain rich product;
OR
- Have as the first ingredient a fruit, vegetable, dairy product or protein food (meat, beans, poultry, etc.);
OR
- Be a “combination food” with at least ¼ cup fruit and/or vegetable;
OR
- Contain 10% of the Daily Value of one nutrient of public health concern (only through June 30, 2016)
 - Calcium, potassium, vitamin D, dietary fiber

C. Specific Nutrient Standards

Calories	<ul style="list-style-type: none">•Snacks & side dishes ≤200 calories•Entrees ≤350 calories
Fat	<ul style="list-style-type: none">•Total fat: ≤35% of total calories•Saturated Fat: <10% of total calorie•Trans Fat: Zero (0) grams
Sugar	<ul style="list-style-type: none">•≤ 35% of <u>weight</u> from total sugars per item
Sodium	<ul style="list-style-type: none">•Entrée items that do not meet NSLP/SBP exemptions: ≤480 mg sodium per item•Snack and side items: ≤230 mg (Decrease to 200mg July 1, 2016)

D. Some general exemptions and Nutrient exemptions

- Fruits and Vegetables
- Entrée
- Nuts, Seeds and Nut/Seed Butters
- Reduced Fat Cheeses

E. Implementation and compliance

- Must be incorporated into the division’s Local Wellness Policy.
- Local Educational Agencies must maintain records and ensure compliance in all areas that are outside of the control of the school nutrition programs operation.
- School Food Authorities must maintain records and ensure compliance in school nutrition operations.
- The Department of Education shall ensure the local education agencies and public school food authorities comply with these nutrition standards.

Project 2611 – Re-Proposed

STATE BOARD OF EDUCATION

CH 740: To establish nutritional guidelines for all foods sold to students in the public schools

CHAPTER 740 REGULATIONS GOVERNING NUTRITIONAL GUIDELINES FOR COMPETITIVE FOODS AVAILABLE FOR SALE IN THE PUBLIC SCHOOLS

8VAC20-740-10. Definitions.

"À 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.

"After school activities" mean activities that occur on the school campus after the school day.

"Beverage" means a drinkable liquid.

"Calorie" means the amount of heat required to change the temperature of one gram of water from 14.5 degrees Celsius to 15.5 degrees Celsius. Calorie is used synonymously with kilocalorie as a unit of measure for energy obtained from food and beverages.

"Child Nutrition Programs" mean school meal programs funded and regulated by the U.S. Department of Agriculture (USDA) and includes the National School Lunch Program (NSLP), School Breakfast Program (SBP), Afterschool Snack Programs (ASP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and Special Milk Program (SMP).

“Combination foods” mean products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein or grains.

"Competitive food" means all food available for sale to students on the school campus 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.

Competitive food includes all food available for sale to students:

1. In school cafeterias as à la carte items
2. In vending machines located on the school campus during the school day.
2. As fundraisers held on the school campus during the school day.
3. In school snack bars on the school campus during the school day.
4. In school stores operated on school campus during the school day by the school, a student association, or other school-sponsored organization.
5. At school activities such as special fundraisers, achievement rewards, classroom parties, school celebrations, classroom snacks, or school meetings held on the school campus during the school day.
6. In culinary education programs where food prepared as part of the educational curriculum is sold to students (this does not apply if food is sold to adults only).

This term does not apply to food a student brings from home for consumption at school or items available for sale to adults only in areas not accessible to students (e.g., teachers lounges).

"Dietary Guidelines for Americans" means guidelines jointly issued by the U.S. Department of Health and Human Services and U.S. Department of Agriculture and revised every five years, and that provide authoritative advice based on current scientific evidence and medical knowledge for people two years of age and older about how good dietary habits can promote health and reduce risk for major chronic diseases.

"Entrée item" means an item that is either: (a) A combination food of meat or meat alternate and whole grain rich food; or (b) A combination food of vegetable or fruit and meat or meat alternate; or (c) A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky).

"Kcal" means kilocalorie, commonly known as calorie, which is a unit of measure in the United States for energy obtained from food and beverages. A kilocalorie is equal to 1,000 calories.

"Obesity" means obesity in children and adolescents referring to the age-specific and sex-specific body mass index (BMI) that is equal to or greater than the 95th percentile of the BMI charts of the Centers for Disease Control and Prevention (CDC).

"School campus" means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

“School day” means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day.

"School Food Authority" or "SFA" means, under the federal child nutrition laws, the entity that is legally responsible for the operations and administration of the local school nutrition programs (e.g., school division).

"School Health Advisory Board" or "SHAB" means an entity formed according to the provisions of § 22.1-275.1 of the Code of Virginia that assists in the development of wellness policies as required by § 204 of Public Law 108-265 (42 USC § 1751 et seq.), as amended

"Trans fat" means food items containing vegetable shortening, margarine, or any partially hydrogenated vegetable oil, unless the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as zero grams per serving.

"Wellness policy" means a policy required for public schools participating in a nutrition program authorized by the Richard B. Russell National School Lunch Act (42 USC § 1751 et seq.) or the Child Nutrition Act of 1966 (42 USC § 1771 et seq.) that meets minimum standards designed to support school environments that promote student wellness.

“Whole grains” means grains that are made with enriched and whole grain meal or flour, in accordance with the most recent grains guidance from the U.S. Department of Agriculture Food and Nutrition Service.

“Whole grain-rich” means products that contain at least 50 percent whole grains and the remaining grains in the product must be enriched.

8VAC20-740-20. Applicability.

- A. This regulation shall apply to all public school divisions, public schools, and public school food authorities (SFAs) in the Commonwealth of Virginia.
- B. This regulation shall not apply to beverages.
- C. This regulation shall apply to the nutritional content of food items available for sale to students on the school campus of any public school, and other public SFAs such as Residential Child Care Institutions, during the school day. It shall apply to:
 - 1. Foods available for sale to students in vending machines.
 - 2. Foods available for sale to students as à la carte items in the school cafeteria.
 - 3. Foods available for sale to students at snack bars and stores operated by the school, a student association, or other school-sponsored organization.
 - 4. Foods available for sale to students at school activities such as fundraisers.
 - 5. Foods available for sale to students by culinary or other educational programs.
- D. This regulation shall not apply to the nutritional content of foods:
 - 1. Provided as meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.
 - 2. Available for sale at snack bars, concession stands, or athletic events after the school day.
 - 3. Available for sale either during intermission or immediately before or after athletic events scheduled after the school day.

4. Available for sale for school-related fundraising activities that take place off the school campus.
 5. Available for sale during activities that take place after the school day, such as clubs, yearbook, band and choir practice, student government, drama, sports practices, interscholastic sporting events, school plays, band concerts, etc.
 6. Available for sale to adults only in areas not accessible to students.
- E. The requirements of this regulation supplement 8 VAC 20-290-10 and 8 VAC 20-580-10-100 which remain in effect.

8VAC20-740-30. Nutrition standards.

- A. The nutrition standards apply to all foods available for sale to students (a) outside the school meal programs; (b) on the school campus; and (c) at any time during the school day, and shall be consistent with the most recent Dietary Guidelines for Americans.
- B. General Standards: to be allowable, a competitive food must:
1. Meet all of the competitive food nutrient standards, and
 2. Be a grain product that contains 50 percent or more whole grains by weight or have as the first ingredient a whole grain (whole grain rich), or
 3. Have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or
 4. Be a combination food that contains $\frac{1}{4}$ cup of fruit and/or vegetable; or

5. Contain ten percent (10%) of the Daily Value of a nutrient of public health concern based on the most recent Dietary Guidelines for Americans (i.e., calcium, potassium, vitamin D or dietary fiber) for the period through June 30, 2016. Effective July 1, 2016, this criterion is obsolete and may not be used to qualify as a competitive food.

If water is the first ingredient, the second ingredient must be one of the food items above.

C. General Exemptions:

1. Fresh, canned, and frozen fruits or vegetables with no added ingredients except water, or in the case of fruit, packed in 100 percent juice, extra light, or light syrup are exempt from the nutrient standards.
2. Canned vegetables that contain a small amount of sugar for processing purposes are also exempt.
3. An entrée item offered as part of the national school lunch program (under 7 CFR Part 210) or the school breakfast program (under 7 CFR Part 220) is exempt from all competitive food standards if it is offered as a competitive food on the day of, or the school day after, it is offered in the lunch or breakfast program. Exempt entrée items offered as a competitive food must be offered in the same or smaller portion sizes as in the lunch or breakfast program.
4. Side dishes offered as part of the lunch or breakfast program and served à la carte must meet the nutrition standards in this section.

D. Accompaniments: The accompaniments to a competitive food item must be included in the nutrient profile as a part of the food item served in determining if an

item meets the nutrition standards for competitive food. The contribution of the accompaniments may be based on the average serving size of the accompaniment used per item.

E. Nutrient Standards:

1. Standard 1: Calories.

- a. Snack items and side dishes sold à la carte shall be no more than 200 calories per items as served or as packaged ,including the calorie content in any accompaniments, such as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standards.
- b. Entrée items sold à la carte shall contain no more than 350 calories including the calorie content of any accompaniments, per items as served or as packaged, unless they meet the exemption for NSLP/SBP entrée items in section C above and must meet all of the other nutrient standards in this section.
- c. The Calories contained in any accompaniments must be included in the nutrient profile as a part of the item served.

2. Standard 2: Fat.

- a. Total Fat: Competitive foods shall contain no more than thirty-five percent (35%) of total calories from fat per item as packaged or served.

Exemptions to the total fat standard are granted for:

- (1) Reduced fat cheese and part-skim mozzarella cheese (this exemption does not apply to combination foods).

- (2) Nuts, seeds, nut/seed butters (this exemption does not apply to combination foods that contain nuts, seed or nut/seed butters such as peanut butter and crackers, trail mix, etc).
 - (3) Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat, and
 - (4) Seafood with no added fat.
- b. Saturated Fat: Competitive foods shall have less than ten percent (10%) of total calories from saturated fat per item as packaged or served.
- Exemptions to the saturated fat standard are granted for:
- (1) Reduced fat cheese and part-skim mozzarella cheese (this exemption does not apply to combination foods).
 - (2) Nuts, seeds, nut/seed butters, (This exemption does not apply to combination foods that contain nuts, seed or nut/seed butters such as peanut butter and crackers, trail mix, etc); and
 - (3) Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat.
- c. Trans Fat: Competitive foods must have zero grams (0g) of trans fat per item as packaged or served.
3. Standard 3: Sugar.
- a. Total sugar shall be no more than thirty-five percent (35%) of weight per item as packaged or served.
- Exemptions to the sugar standard are provided for:
- (1) Dried whole fruits or vegetables;

- (2) Dried whole fruit or vegetable pieces;
- (3) Dehydrated fruits or vegetables with no added nutritive sweeteners; and
- (4) Dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes.

4. Standard 4: Sodium.

- a. Sodium content in snacks shall be no more than 230 mg per item as packaged or served including the sodium content in any accompaniments, such as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standards. Effective July 1, 2016, the sodium standard shall be no more than 200 mg per item as packaged or served including the sodium content in any accompaniments.
- b. Entrée items sold à la carte shall have no more than 480 mg of sodium per item as packaged or served, including the sodium content in any accompaniments, such as butter, cream cheese, salad dressing, etc., and must meet all other nutrient standards, unless they meet the exemption for NSLP/SBP entrée items in 8VAC20-740-30 C 3, and must meet all of the other nutrient standards in this section.

8VAC20-740-40. Implementation and compliance.

- A. Each local school board shall incorporate and adopt these nutrition guidelines as a compulsory component of the Divisionwide Local Wellness Policy mandated by federal regulation for all Local Education Agencies that participate in the national school lunch program. The nutrition guidelines for competitive foods, together with

the other required components of the Local Wellness Policy, 1) establish and identify school division leadership with the authority to enforce the Local Wellness Policy throughout the school campus, 2) establish specific goals for nutrition promotion, nutrition education, physical activities, and other school-based activities that promote wellness; and 3) establish policies that address marketing and advertising of only foods that meet the nutrition guidelines for competitive foods, serve to promote student health, prevent childhood obesity and combat problems associated with poor nutrition and physical inactivity.

B. Recordkeeping Requirements: The recordkeeping requirement is essential to the integrity of the competitive food standards. To determine whether a food item is an allowable competitive food, the local educational agency must assess the nutritional profile of the food item. Records must be retained to document compliance. (e.g., the nutrition labels, receipts, and/or product specifications).

1. Local Educational Agencies:

- a. Shall be responsible for maintaining records documenting compliance with the competitive food nutrition standards for food available for sale in areas that are outside the control of the school nutrition programs operation.
- b. Shall be responsible for ensuring any organization/school activity designated as responsible for food service at the various venues in the school (other than the school nutrition programs) maintains records documenting compliance with the competitive food nutrition standards.
- c. Shall designate an individual at the division or school level to monitor and ensure compliance of this regulation in all areas that are outside of the control

of the school nutrition programs operation. This designee shall not be school nutrition personnel.

2. The School Food Authority shall be responsible for maintaining records for foods served under the auspices of the nonprofit school nutrition programs account.
3. The Department of Education shall ensure the local education agencies and school food authorities comply with these nutrition standards. Non-compliance shall require corrective action.