

# Virginia Board of Education Agenda Item



**Agenda Item:** D

**Date:** November 19, 2015

<b>Title</b>	Final Review of a Resolution to Implement an Amendment to § 22.1-207.4 of the <i>Code of Virginia</i> (HB 2114 – 2015) Pending Incorporation into the <i>Regulations Governing Nutritional Guidelines for Competitive Foods Available for Sale in the Public Schools</i>		
<b>Presenter</b>	Dr. Cynthia A. Cave, Assistant Superintendent for Policy and Communications		
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**Purpose of Presentation:**

Other initiative or requirement. Specify below:

Action required by state or federal law or regulation

**Previous Review or Action:**

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

October 22, 2015 First Review

**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
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
X	Other Priority or Initiative. Specify: Action required by state law

**Background Information and Statutory Authority:**

Section 22.1-16 of the *Code of Virginia* states:

The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.

Section 10 of the Child Nutrition Act of 1966, 42 USC 1779, as amended by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), requires that all food sold outside of the school meal programs, on the school campus, and at any time during the school day, must meet the nutrition standards set forth in the interim final rule titled *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010*. This interim final rule, also known as *the Smart Snacks rule*, was published on June 28, 2013 and is

effective on July 1, 2014 for all schools participating in the National School Lunch and School Breakfast Programs.

However, the HHFKA provides for special exemptions to the prohibition of selling foods that do not meet nutrition standards for school-sponsored fundraisers held during the school day on the school campus. Guidance issued by the United States Department of Agriculture specifies that exempted fundraisers cannot take place more often than the frequency specified by the state agency. The Smart Snacks standards allow states to develop a policy on the number of exemptions (or events) for fundraisers selling food that does not meet the standards. If a state agency does not specify the exemption frequency, then there can be no fundraising events during school hours and on the school campus where food that does not meet the Smart Snacks Nutrition Standards may be sold.

The Board of Education's proposed *Regulations Governing Nutritional Guidelines for Competitive Foods Sold in Virginia Public Schools* regulations would be the vehicle for enacting the fundraising exemptions permitted by the federal legislation (HHFKA). Competitive foods include any food, excluding beverages, sold to students on school grounds during regular school hours, which is not part of the school breakfast or school lunch program. The Board of Education adopted these proposed regulations for submittal according to the Administrative Process Act (APA) on May 13, 2014. The regulations are pending Executive Branch review. There are no allowances for exemptions for fundraisers selling foods not meeting federal nutritional standards in the proposed regulations. However, state law proposed and adopted in 2015 requires the regulations to have such exemptions.

[House Bill 2114](#) amended § [22.1-207.4](#) of the *Code of Virginia (Code)* and was approved by the 2015 General Assembly and signed by Governor McAuliffe. It provides that the regulations promulgated pursuant to the *Code* section shall permit each public school to conduct no more than 30 exempted school-sponsored fundraisers per school year on school grounds during regular school hours. The Board of Education will have to incorporate this amendment to § 22.1-207.4 of the *Code* into the *Regulations Governing Nutritional Guidelines for Competitive Foods Sold in Virginia Public Schools* at the time of final adoption in compliance with the requirements of the Administrative Process Act.

## **HB 2114**

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-207.4 of the Code of Virginia is amended and re-enacted as follows:

**§ 22.1-204.4.** Nutritional guidelines for competitive foods.

*A. 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...*

*E. The regulations promulgated pursuant to this section shall permit each public school to conduct on school grounds during regular school hours no more than 30 school-sponsored fundraisers per school year, during which food that does not meet the nutrition guidelines for competitive foods may be sold to students.*

In the interim, in order to be compliant with the law, the Board of Education may adopt a resolution. The proposed resolution provides that local school divisions shall permit, effective with the date of

adoption of this resolution, each public school to conduct no more than 30 exempted school-sponsored fundraisers per school year on school grounds during the regular school hours, during which food and beverages that do not meet the nutrition guidelines for competitive foods may be sold to students. At the October 22, 2015 meeting, the Board of Education discussed the adoption of House Bill 2114 as law, and its potential negative impact on the goal of providing nutritional food choices for students during the school day. Although required by the legislation to permit each public school to exempt up to 30 school-sponsored fundraisers from food nutritional standards per school year, Board members emphasized communicating to school divisions their concerns for sound child nutrition and encouraging the sale of healthy choices for fundraisers. In addition, members emphasized that guidance and advice on the sale of competitive foods and the development of local policies should be provided.

**Summary of Important Issues:**

The USDA has issued guidance to state agencies in *USDA Memo # SP 36-2014 SUBJECT: Smart Snacks Nutrition Standards and Exempt Fundraisers* which provided detailed information regarding fundraiser exemptions. Section 210.11(b)(4) of the interim final rule specifies that such specially exempted fundraisers must not take place more often than the frequency specified by the state agency. As outlined in the interim final rule, if a state agency does not specify the exemption frequency, the state agency is electing to establish a policy that no fundraiser exemptions may be granted. As noted in the preamble to both the proposed and interim final rules, it is expected that state agencies will ensure that the frequency of such exempt fundraisers on school grounds during the school day does not reach a level which would impair the effectiveness of the Smart Snacks requirements.

The Smart Snacks rule only applies to foods and beverages sold to students on the school campus during the school day. The nutrition standards do not apply to foods and beverages sold at events held after school, off campus, or on weekends, such as school plays or sporting events.

The 2015 General Assembly enacted and the Governor signed HB 2114 to require that the Board's regulations allow a public school to conduct up to 30 fundraisers a school year on school grounds during school hours in which foods not meeting federal nutritional standards could be sold. The Board of Education must incorporate this amendment to § 22.1-207.4 of the *Code* into the proposed regulations, *Regulations Governing Nutritional Guidelines for Competitive Foods Sold in Virginia Public Schools*, at final adoption in compliance with the APA. However, it is not necessary for the Board to wait until it that time before taking action which would permit school divisions to implement the requirement now.

**Impact on Fiscal and Human Resources:**

There is no fiscal impact on local school divisions.

**Timetable for Further Review/Action:**

NA

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education adopt the proposed Resolution to Implement an amendment to § 22.1-207.4 of the *Code of Virginia* (HB 2114 – 2015) pending incorporation into the *Regulations Governing the Nutritional Guidelines for Competitive Foods Available for Sale in the Public Schools*.

**Rationale for Action:**

Action is recommended to permit school divisions to implement the exemptions immediately so as to honor the intent of the 2015 legislation approved by the General Assembly and signed by the Governor.

**A RESOLUTION TO ESTABLISH AND DEFINE EXEMPTIONS FOR SCHOOL-SPONSORED FUNDRAISERS PENDING INCORPORATION IN THE PROPOSED REGULATIONS GOVERNING NUTRITIONAL GUIDELINES FOR COMPETITIVE FOODS AVAILABLE FOR SALE IN THE PUBLIC SCHOOLS**

**WHEREAS**, Section 10 of the Child Nutrition Act of 1966, 42 USC 1779, as amended by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), requires that all food sold outside of the school meal programs, on the school campus, and at any time during the school day must meet the nutrition standards set forth in the interim final rule titled *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010*. This interim final rule, also known as *the Smart Snacks* rule, was published on June 28, 2013 and effective on July 1, 2014 for all schools participating in the National School Lunch and School Breakfast Programs.

**WHEREAS**, the HHFKA provides flexibility for special exemptions for the purpose of conducting school-sponsored fundraisers during which foods that do not meet the nutrition standards for Smart Snacks may be sold.

**WHEREAS**, the United States Department of Agriculture (USDA) has issued guidance to state agencies in USDA Memo # SP 36-2014 SUBJECT: *Smart Snacks Nutrition Standards and Exempt Fundraisers* which provided detailed guidance regarding fundraiser exemptions. Section 210.11(b)(4) of the interim final rule specifies that such specially exempted fundraisers must not take place more often than the frequency specified by the state agency. As outlined in the interim final rule, if a state agency does not specify the exemption frequency, the state agency is electing to establish a policy that no fundraiser exemptions may be granted.

**WHEREAS**, the Smart Snacks rule only applies to foods and beverages sold to students on the school campus during the school day. The nutrition standards do not apply to foods and beverages sold at events held after school, off campus, or on weekends, such as school plays or sporting events.

**WHEREAS**, House Bill 2114, which amended § 22.1-207.4 of the *Code of Virginia (Code)*, was approved by the 2015 General Assembly and signed by Governor McAuliffe and provides that the regulations promulgated pursuant to this section regarding the nutritional guidelines for competitive foods shall permit each public school to conduct on school grounds during regular school hours no more than 30 school-sponsored fundraisers per school year, during which food that does not meet the nutrition guidelines for competitive foods may be sold to students.

**WHEREAS**, it is the intent of the Board of Education to incorporate this amendment to § 22.1-207.4 of the *Code* into the proposed *Regulations Governing Nutritional Guidelines for Competitive Foods Sold in Virginia Public Schools* at a future time in compliance with the requirements of the Administrative Process Act.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Education that local school divisions shall permit, effective with the date of adoption of this resolution, each public school to conduct on school grounds during the regular school hours, no more than 30 school-sponsored fundraisers per school year, during which food and beverages that do not meet the nutrition guidelines for competitive foods may be sold to students. Pursuant to the *Regulations for the School Breakfast Program* and the *Regulations Governing School Lunch Sale of Food Items*, the sale of any such food or beverage items cannot take place in competition with the National School Lunch and School Breakfast programs from 6 a.m. until after the close of the last breakfast period and from the beginning of the first lunch period to the end of the last lunch period.

The Board of Education encourages school divisions to incorporate local standards for fundraisers that include foods and beverages into its required Local Wellness Policy to ensure consistency among schools in the division in the implementation of these fundraising exemptions.

Adopted in Richmond, Virginia, This Nineteenth Day of November 2015.

Signature:

Dr. Billy K. Cannaday, Jr. President  
Board of Education

Adopted in the Minutes of the Virginia Board of Education  
November 19, 2015