

Board of Education Agenda Item

Item: _____ C. _____

Date: September 23, 2010

Topic: First Review of a Notice of Intended Regulatory Action (NOIRA) for Proposed Regulations Governing Nutritional Guidelines for Competitive Foods Sold in the Public Schools

Presenter: Mr. Kent C. Dickey, Deputy Superintendent for Finance and Operations

Telephone Number: (804) 225-2025

E-Mail Address: kent.dickey@doe.virginia.gov

Origin:

____ Topic presented for information only (no board action required)

Board review required by
 State or federal law or regulation
____ Board of Education regulation
____ Other: _____

Action requested at this meeting ____ Action requested at future meeting: _____ (date)

Previous Review/Action:

No previous board review/action

____ Previous review/action
date _____
action _____

Background Information:

Senate Bill 414 (2010 Acts of Assembly) amended the *Code of Virginia* by adding section 22.1-207.4: 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 regular school hours that are not part of the federal National School Lunch Program (NSLP) or School Breakfast Program (SBP).

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 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 policies have been at the discretion of the local school divisions.

Summary of Major Elements:

As specified in enactment clause three of SB 414, the board 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:

1. nutritional guidelines are established for all competitive foods sold to students on school grounds during regular school hours. "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 programs. SB 414 did not include "beverages" under the definition of "competitive food."
2. the guidelines be based on the Institutes 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;
3. 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
4. the guidelines are incorporated by local school boards as part of their existing local wellness policy.

The Notice of Intended Regulatory Action Agency Background Document that initiates the regulatory process under the Virginia Administrative Process Act (APA) is attached.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the attached NOIRA and authorize Department of Education staff to proceed with the requirements of the Administrative Process Act.

Impact on Resources:

It is anticipated that the adopted regulation 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; and 2) possibly financially, as they change the food offerings on the school site during the school day to meet the adopted nutritional guidelines. 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 on-going staff support and technical assistance to divisions in the implementation of these regulations.

Timetable for Further Review/Action:

The timetable for further action in regards to the development of the regulations will be governed by the requirements of the Administrative Process Act. Pursuant to enactment clause four of SB 414, the board must report to the General Assembly on the status of the final regulations by December 1, 2011. Also, Section 22.1-207.4 B. requires periodic review of the nutritional guidelines by the board with assistance

from the Department of Health to ensure they remain current.

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.



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPARTMENT OF EDUCATION
Virginia Administrative Code (VAC) citation	____ VAC____ - ____
Regulation title	NUTRITIONAL GUIDELINES FOR COMPETITIVE FOODS SOLD IN THE PUBLIC SCHOOLS
Action title	To establish nutritional guidelines for all foods sold to students in the public schools during the regular school day that are not part of the national school lunch or school breakfast programs.
Date this document prepared	September 14, 2010

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

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” sold to public school students on school grounds during regular school hours.
2. be based on the Institutes of Medicine’s (IOM) Recommended Standards for Competitive Foods in Schools or the Alliance for a Healthier Generation’s Competitive Food Guidelines.
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 sold 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.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

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 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 policies have been at the discretion of the local school divisions.

Statewide nutritional guidelines for competitive foods sold to students during the school day 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.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

This regulation will include specific nutritional guidelines for foods sold to students throughout the school day on school grounds that are not part of the national school lunch or breakfast programs. The nutrient/ingredient areas to be addressed in these standards will include, but not be limited to, calories, fat, sugar, and sodium content. Evidence-based guidelines established by the Institutes of Medicine (IOM) or the Alliance for a Healthier Generation shall be used in establishing these statewide standards.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

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

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action including, but not limited to, 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation. The agency is also 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 by mail, e-mail, 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, e-mail Catherine.Digilio-Grimes@doe.virginia.gov. Written comments must include the name and address of the commenter; please also submit an e-mail address for use by the agency for subsequent communications. In order to be considered, comments must be received by the last day of the public comment period. A public hearing on the NOIRA will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board of Education is required by SB 414 to 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 research necessary for the development of the regulations. Consequently, the agency is using the participatory approach in the development of the proposed regulations.

Family impact

Assess the potential 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.

In regards to category one above, the regulations will increase the nutritional quality of competitive foods offered to students in the public schools with the goal of increased student health.