

Virginia Board of Education Agenda Item



Agenda Item: J

Date: October 22, 2015

Title	First 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>		
Presenter	Dr. Cynthia A. Cave, Assistant Superintendent for Policy and Communications		
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Purpose of Presentation:

Other initiative or requirement. Specify below:

To implement a new *Code of Virginia* requirement regarding competitive foods.

Previous Review or Action:

No previous review or action.

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
X	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

Background Information and Statutory Authority:

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

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.

The proposed resolution provides 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. Adoption of this resolution is necessary since this new legislative requirement is not part of the proposed regulations required by [SB 414](#) (2010) which are still in the Administrative Process Act promulgation review process and are in the office of the Secretary of Education for review. That bill required 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. The initial Notice of Intended Regulatory Action (NOIRA) was prepared on September 14, 2010, and the regulations re-proposed on May 13, 2014 in response to comments received at both the public hearing conducted on October 24, 2013 and during the public comment period, as well as in response to the release of the USDA interim final rule governing competitive foods in schools.

[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. It 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. The bill defined *competitive food* to 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 will 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* (Nutritional Guidelines), at a future time in compliance with the requirements of the Administrative Process Act.

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

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 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. 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 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 a future time in compliance with the requirements of the Administrative Process Act.

However, it is not necessary for the Board to wait until it promulgates regulations before taking action which would permit school divisions to implement this new 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 waive first review and 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 at this meeting in order to permit school divisions to implement this requirement immediately.

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 Twenty-Second Day of October 2015.

Signature:

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

Adopted in the Minutes of the Virginia Board of Education
October 22, 2015