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

8VAC20-740-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"A 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" means 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" means 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" means 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 (42 USC § 1751 et seq.) and the Child Nutrition Act of 1966 (42 USC § 1771 et seq.).

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

1. In school cafeterias as a 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 fundraisers, achievement rewards, classroom parties, school celebrations, classroom snacks, or school meetings held on the school campus during the school day.
7. In culinary education programs where food prepared as part of the educational curriculum is sold to students; however, this provision 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.

"Entree item" means an item that is either (i) a combination food of meat or meat alternate and whole grain rich food; (ii) a combination food of vegetable or fruit and meat or meat alternate; or (iii) 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 (e.g., dried beef jerky).

"Fundraiser" means a school-sponsored activity where food or nonfood items are sold on the school campus during regular school hours by the school-sponsored organization to raise money for a school-related program or activity. One fundraiser is defined as one or more fundraising activities by one or more school-sponsored organizations that last one school day.

"Fundraising exemption" means an exception that allows a school-sponsored organization to sell on the school campus during regular school hours (i) food or beverages that do not meet the nutrition standards established in this chapter and (ii) items that do not meet the U.S. Department of Agriculture's Smart Snacks in Schools regulation. Fundraisers that sell nonfood items or that sell foods or beverages that meet the nutrition standards are not subject to this chapter or the U.S. Department of Agriculture's Smart Snacks in Schools regulation.

"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 standard school day, as defined in 8VAC20-131-5, except for the purpose of fundraiser exemptions, breaks for meals and recess are included in the regular school hours.

"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 (i.e., school division).

"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% whole grains and the remaining grains in the product must be enriched.

8VAC20-740-20. Applicability.

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

B. Unless otherwise provided in this chapter, its provisions shall not apply to beverages.

C. This chapter 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 a 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 chapter 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 (42 USC § 1751 et seq.) and the Child Nutrition Act of 1966 (42 USC § 1771 et seq.).

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 athletics events scheduled after the school day.

4. Available for sale for school-related fundraising activities that take place off the school campus or for exempt fundraisers as outlined in 8VAC20-740-35.

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, and band concerts.

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

E. The requirements of this chapter supplement 8VAC20-290 and 8VAC20-580, which remain in effect.

8VAC20-740-30. Nutrition standards.

A. The nutrition standards apply to all foods available for sale to students (i) outside the school meal programs; (ii) on the school campus; and (iii) at any time during the school day. The nutrition standards shall be consistent with the most recent Dietary Guidelines for Americans.

B. To be allowable, a competitive food must (i) meet all of the competitive food nutrient standards and (ii) must either:

1. Be a grain product that contains 50% or more whole grains by weight or have as the first ingredient a whole grain (i.e., whole-grain rich);

2. Have as the first ingredient one of the nongrain major food groups: fruits, vegetables, dairy, or protein foods (e.g., meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or

3. Be a combination food that contains 1/4 cup of fruit or vegetable.

If water is the first ingredient, the second ingredient must be one of the food items listed in this subsection.

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% 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 from the nutrient standards.

3. An entree 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 entree items offered as a competitive food must be offered in the same or smaller portion sizes as in the lunch or breakfast program.

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

D. 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 a la carte (i) shall be no more than 200 calories per item as served or as packaged, including the calorie content in any accompaniments, such as butter, cream cheese, and salad dressing, and (ii) must meet all other nutrient standards.

b. Entree items sold a la carte, unless the entree item meets the exemption for NSLP/SBP entree items in subdivision C 3 of this section, shall (i) contain no more than 350 calories, including the calorie content of any accompaniments, per item as served or as packaged, and (ii) 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.

Total fat. Competitive foods shall contain no more than 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, and nut or seed butters. This exemption does not apply to combination foods that contain nuts, seeds, or nut or seed butters, such as peanut butter and crackers and trail mix.

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

(4) Seafood with no added fat.

b. Saturated fat. Competitive foods shall have less than 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, and nut or seed butters. This exemption does not apply to combination foods that contain nuts, seeds, or nut or seed butters, such as peanut butter and crackers and trail mix.

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

c. Trans fat. Competitive foods must have zero grams of trans fat per item as packaged or served.

3. Standard 3: Sugar.

Total sugar shall be no more than 35% of weight per item as packaged or served. Exemptions to the sugar standard are provided for:

a. Dried whole fruits or vegetables.

b. Dried whole fruit or vegetable pieces.

c. Dehydrated fruits or vegetables with no added nutritive sweeteners.

d. Dried fruits with nutritive sweeteners that are required for processing or palatability purposes.

4. Standard 4: Sodium.

a. Sodium content in snacks (i) shall be no more than 200 mg per item as packaged or served, including the sodium content in any accompaniments, such as butter, cream cheese, and salad dressing; and (ii) must meet all other nutrient standards.

b. Entree items sold a la carte, unless the entre item meets the exemption for NSLP/SBP entree items in subdivision C 3 of this section (i) 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, and salad dressing; and (ii) must meet all other nutrient standards in this section.

8VAC20-740-35. Exemption to the nutrition standards for school-sponsored fundraisers.

A. Each public school shall be permitted to conduct, on the school campus during regular school hours, no more than 30 school-sponsored fundraisers per school year during which food or beverages that do not meet the nutrition standards in this chapter or in the U.S. Department of Agriculture's regulations may be sold to students. School divisions are not required to allow exemptions to the nutrition standards in this chapter for school-sponsored fundraisers and may implement more restrictive guidelines as part of the local wellness policy requirements outlined in 8VAC20-740-40 A.

B. One fundraiser is defined as one or more fundraising activities that last one school day. If multiple school-sponsored organizations conduct fundraisers on the same day, the combined activities shall

be counted as one fundraiser. If a fundraising activity lasts more than one school day, each subsequent day's activity shall be considered as one fundraiser and shall count toward the 30 exempt fundraisers total per year.

C. Any fundraiser that sells food or beverages, whether the items meet the nutrition standards or are exempt from the nutrition standards in this chapter, may not be conducted during school meal service times. Pursuant to the Regulations Governing School Lunch Sale of Food Items (8VAC20-290) and the Regulations for the School Breakfast Program (8VAC20-580), any food or beverage item cannot be sold in competition with the National School Lunch Program and School Breakfast Program 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. Pursuant to 8VAC20-290 and 8VAC20-580, the income from any food or beverage sold to students during these times shall accrue to the nonprofit School Nutrition Program account.

D. An exemption is not required for nonfood fundraisers or for fundraisers that sell food or beverage items that meet the nutrition standards in this chapter.

8VAC20-740-40. Implementation and compliance.

A. Each local school board shall incorporate and adopt the nutrition standards in this chapter 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. In addition to incorporating the nutrition standards for competitive foods, the local wellness policy shall (i) establish and identify school division leadership with the authority to enforce the local wellness policy throughout the school campus; (ii) establish specific goals for nutrition promotion, nutrition education, physical activities, and other school-based activities that promote wellness; and (iii) establish policies that address marketing and advertising of only foods that meet the nutrition standards for competitive foods, serve to promote student health, prevent childhood obesity, and combat problems associated with poor nutrition and physical inactivity.

B. Local educational agencies and school food authorities must retain the records used to document compliance with this chapter; that is, the documentation used to assess the nutritional profile of the food item and determine whether a food item is an allowable competitive food (e.g., the nutrition labels, recipes, 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 of the control of the school nutrition programs operation.

b. Shall be responsible for ensuring any organization or 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 be responsible for maintaining records each school year documenting the number of exempt fundraisers conducted at each school within the local education agency.

d. Shall designate an individual at the division or school level to monitor and ensure compliance with this chapter 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 that the local education agencies and school food authorities comply with these nutrition standards and shall provide guidance to schools on alternative school-sponsored fundraisers that do not involve the sale of foods or beverages to students and guidance on how to determine if foods and beverages sold at school-sponsored fundraisers meet these standards. Noncompliance determined by the local education agency, school food authority, or Department of Education shall require corrective action.