



COMMONWEALTH of VIRGINIA
Department of Education

DATE: October 6, 2017
TO: Division Superintendents
FROM: Steven R. Staples, Superintendent of Public Instruction
SUBJECT: **Effective Date of Regulations Governing Nutritional Standards for Competitive Foods Available for Sale in the Public Schools (8VAC20-740) and Transmittal of the Statement of Administrative Impact and Projected Costs of Implementation**

This memorandum notifies school divisions of the effective date of the final regulations implementing state nutrition standards for competitive foods available for sale to students during the school day. The state regulations align with the federal *Smart Snacks in School* regulations and include a provision that allows school divisions to permit exemptions to the federal and state nutrition standards for a limited number of school-sponsored fundraisers. These regulations apply to all public school divisions and public schools in Virginia.

The General Assembly passed legislation in 2010, SB414, that established Section §22.1-207.4 of the *Code of Virginia* and required the Board of Education (Board) to promulgate regulations governing nutritional guidelines for competitive foods sold in the public schools; the Board adopted proposed regulations in 2014. Subsequent legislation in 2015, HB2114, required the Board to amend the proposed regulations to permit a limited number of school-sponsored fundraisers conducted during the school day to be exempt from the nutrition standards in both the federal *Smart Snacks in School* regulations and the proposed state regulations. The Board adopted a resolution in 2015 to implement this requirement and amended the proposed regulations. Pursuant to the Administrative Process Act (APA), the re-proposed amended regulations have been under Executive Branch review. The final regulations were published in the [Virginia Register of Regulations](#) on September 18, 2017, and will become effective October 18, 2017.

The complete text of 8VAC20-740, *Regulations Governing Nutritional Standards for Competitive Foods Available for Sale in the Public Schools*, is Attachment A to this memorandum. The nutrition standards, as defined in 8VAC20-740-30, are aligned with the federal *Smart Snacks in School* regulations that became effective July 1, 2014, and apply to all foods available for sale to students during the regular school day, as detailed in 8VAC20-740-20. The nutrition standards do not apply to: food a student brings from home; food available for sale only to adults; food available for sale after the school day; or, foods or beverages sold as part of an exempt fundraiser. The requirements and definitions for an exempt fundraiser are detailed in 8VAC20-740-35. School divisions are not required to allow exemptions to the nutrition standards for school-sponsored fundraisers and may implement more restrictive guidelines as part of the required local wellness policy.

School divisions are required to incorporate and adopt the nutrition standards in these regulations as a component of the federally mandated local wellness policy. The local educational agency (LEA) is required to monitor compliance with these regulations and maintain documentation of such compliance for all foods available for sale to students during the school day in areas that are outside the control of the school nutrition program. The LEA is also required to ensure that all entities responsible for the sale of food in any venue in the school during the school day maintain documentation of compliance with these regulations. If the LEA elects to allow exemptions to these regulations for a limited number of school-sponsored fundraisers, the LEA must maintain documentation of the number of exempt fundraisers conducted at each school during the school

year. The LEA must also designate an individual at the division or school level to monitor and ensure compliance with these regulations in all areas that are outside the control of the school nutrition program; the individual shall not be a school nutrition program employee. The school food authority (SFA), also known as the school nutrition program, is responsible for maintaining records of compliance with these regulations for all foods served in areas under the responsibility of the SFA.

As part of its responsibility for promulgating new regulations or revising existing regulations, pursuant to §22.1-17 of the *Code of Virginia*, the Board is required to develop a statement of the administrative impact and projected cost to school divisions related to implementing and complying with such regulations. The administrative impact of the *Regulations Governing Nutritional Guidelines for Competitive Foods Sold in the Public Schools* includes the requirements for school divisions to: incorporate these regulations into their required local wellness policy; monitor compliance with the regulations; and, maintain documentation of fundraiser exemptions. The projected costs to school divisions related to this regulatory action will be the human resources needed to monitor and document compliance with this requirement and the potential change in revenue from competitive foods and fundraisers upon implementation of the nutrition standards.

The Department of Education (Department) is also required to ensure school divisions comply with these regulations and to provide guidance on their implementation. The Office of School Nutrition Programs will conduct a webinar on November 2, 2017, at 2 p.m. The webinar will provide information on implementation of these regulations, as well as guidance on how schools can determine if foods available for sale to students at school-sponsored fundraisers meet these nutrition standards, and on alternative fundraisers that do not involve the sale of foods and beverages.

School divisions may submit questions and feedback on these regulations to the Office of School Nutrition Programs at SNPPolicy@doe.virginia.gov. The Department's local School Nutrition Advisory Council members will also solicit input from their regions.

SRS/SCC/cc

Attachment:

- A. [8VAC20-740: Regulations Governing Nutritional Standards for Competitive Foods Available for Sale in the Public Schools](#) (PDF)