

# **Proposed Amendments to Massachusetts Regulation 105 CMR 225.000: Nutrition Standards for Competitive Foods and Beverages in Public Schools**

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Presentation to the Public Health Council  
November 12, 2014

# Background

- The “Act Relative to School Nutrition,” signed into law on July 30, 2010, required the Massachusetts Department of Public Health (DPH) to establish standards for competitive foods and beverages sold or provided in public schools during the school day.
- DPH worked with the Massachusetts Department of Elementary and Secondary Education (DESE) and other key partners to develop the nutrition standards, which are based primarily on the Institute of Medicine’s *Nutrition Standards for Foods in Schools* and the *Dietary Guidelines for Americans, 2010*.

# Background

- Regulations were passed by Public Health Council on July 13, 2011. Schools were to comply with the nutrition standards beginning on August 1, 2012, unless otherwise noted.
- In June 2013, USDA published the *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 Interim Final Rule*.
- The federal regulations were effective in August 2013, with an implementation date of July 1, 2014.
- Massachusetts regulations align with USDA standards in many cases, but this new rule introduced standards that Massachusetts has not addressed.

# Proposed Regulatory Changes

- In August, DPH proposed several changes to the competitive foods regulation to the Public Health Council.
- Proposed amendments highlighted:
  - 5 areas where MA does not currently meet the minimum and must come into compliance
  - 7 areas where current MA standard is more strict and DPH recommends maintaining current standard
  - 4 areas where current MA standard is more strict and DPH recommends aligning with USDA

# Public Hearing and Public Comment

- Public Hearing held September 9, 2014
  - Two organizations provided oral testimony
- Written comments were accepted through September 12, 2014
  - Written comments received from 45 individuals and/or organizations

# Overview of Comments

- 43 of 45 were supportive of all or most changes to the regulation
- Two opposed were in favor of more alignment with federal regulation
- Majority of comments recommending changes to the proposed amendments concerned sugar
  - calculation by weight vs. calories
  - quantity of sugar in flavored milk

# National School Lunch/School Breakfast Program

- USDA regulation exempts National School Lunch Program/School Breakfast Program (NSLP/SBP) entrée items from having to meet competitive food standards
- DPH proposed no exemption
- 5 organizations testified in support of not allowing the exemption
- 1 requested the exemption be allowed, particularly for pizza, which has improved nutritionally in recent years

# DPH Response

- Entree items are designed to be part of a complete, nutritionally balanced meal and do not always meet the standards for a healthy snack.

*DPH has chosen not to create an exemption for a la carte entree items. Recommends no changes from previously proposed regulation.*

# Caffeine

- USDA allows sale of caffeinated foods and beverages in high schools
- DPH proposed maintaining restriction on caffeine in foods and beverages across all grades
- One comment opposed the restriction
  - Basis is that high school students are old enough to make informed decisions, and restricting sale will not change behavior but rather represents loss of potential revenue for schools and possible increased tardiness for students stopping for coffee before school
- Two organizations commented in support
  - Maintaining the restriction prohibits beverages that provide no nutritional benefit to students

# Artificial Sweeteners

- USDA did not explicitly address artificial sweeteners
- DPH proposed maintaining current restriction on sale of foods or beverages that contain artificial sweeteners
- Two organizations provided testimony in support of this standard

# DPH Response

- The school nutrition standards are designed to assure that the foods and beverages that schools sell to students are healthy and nutritious in order to both promote and model healthy habits.

*DPH has chosen to maintain restrictions on artificial sweeteners and caffeine. Recommends no changes from previously proposed regulation.*

# Timing

- USDA guidance stipulates that standards are in effect from midnight before to 30 minutes after the end of the official school day.
- DPH proposed adopting USDA standard which is more strict than current (30 minutes before to 30 minutes after)
- One commentator urged DPH to consider extending the standards beyond the school day to cover after school activities (except where there are a majority of adults present)

# Fundraising

- USDA exempts “an infrequent school-sponsored fundraiser” and stipulates that state education agency must set the frequency. If the state agency does not set a frequency, the frequency shall be zero.
- DPH did not propose a change – fundraisers were already exempt and it is up to our partners at DESE to set the frequency.
- One commentator urged DPH to “ensure that the nutrition standards cover all in-school fundraisers and celebrations, with the ability to allow for exemptions up to two times per year only”

# DPH Response

*DPH recommends aligning with USDA guidelines regarding the hours of coverage and the application to fundraisers.  
Recommends no changes from previously proposed regulation.*

# Sugar

- USDA guidance states that total sugar must be no more than 35 percent by **weight**.
- DPH proposed adopting the USDA standard
  
- 5 organizations submitted testimony opposing the change, citing concerns that this allows for a wide variety of sugary snacks to be sold in schools
- 38 comments were received in support of the conversion to federal calculation standard, including school nutrition professionals from 31 school districts across MA

# DPH Response

- Careful consideration given to this proposed amendment
- New products allowed as a result of changing the calculation of total sugar will still be subject to other standards and so overall represent healthy alternatives

*DPH recommends aligning with the USDA Guidelines which calculate sugar by weight rather than by calories. Recommends no changes from previously proposed regulation.*

# Beverages – milk and juice

- USDA allows 8oz portion of milk and 100% juice for elementary school, 12oz for middle school and high school
- DPH proposed allowing 8oz portion for both milk and 100% juice across all grades
  - Represents increase from 4oz for juice
- One organization expressed support for the increase to 8oz for 100% juice
- Two commentators expressed concern that 8oz of milk would not be adequate for older high school students
- One commentator extended the concern to include juice portion

# DPH Response

- Careful consideration given to this proposed amendment
- Important to have consistency across grades and model appropriate portion sizes.

*DPH recommends a consistent 8oz portion size for milk and juice across all grades. Recommends no changes from previously proposed regulation.*

# Beverages – sugar in flavored milk

- USDA regulation does not include a limit on the amount of sugar in flavored milk
  - Does stipulate that flavored milk must be fat-free
- DPH proposed adopting USDA regulation
- Five organizations urged DPH to maintain the previously implemented cap of 22 grams of sugar per 8oz of milk
- One organization expressed support of adopting the federal standard for no limit specified on sugar
  - Industry has responded to nutritional demands and products exist that are ~20 grams of sugar per 8oz

# DPH Response

- Beverages, including flavored milk, are not subject to the calorie or other standards so potential for added sugars could be high
- Since products already exist that meet the 22 gram per 8oz limit, and those products are currently in schools, there is likely to be minimal impact on schools or students to reinstate the 22 gram sugar restriction.

*DPH recommends changing the proposed amendment to the regulation and retaining the restriction to 22 grams of sugar per 8oz portion of flavored milk.*

# Beverages – other beverages

- USDA allows additional beverages for high school only
  - various calorie amounts allowed depending on portion of beverage, no more than 60 calories per 12oz
- DPH proposed maintaining the clause that stipulates no beverages other than low- or non-fat milk, 100% juice, and water be allowed
- Three organizations submitted testimony supporting maintenance of this clause

# DPH Response

*DPH recommends maintenance of the clause that no beverages other than milk, 100% juice, and water be sold*

# Summary

- Overwhelmingly supportive testimony indicative that proposed amendments presented in August, in general, represent the correct balance for health and palatability for students
- Careful consideration given to revisions which could allow products with additional sugar to be sold
- Concerned that not retaining a sugar restriction on fat-free flavored milk could open the door to returning to a higher sugar content than currently available products

# Final Proposed Regulation

- The final regulation includes just one revision from that which the Council saw in August.
  - Section 225.200(A)(2)(d) reincorporates the previously promulgated 22 gram restriction on sugar per 8 oz portion of flavored milk. This is added to previous stipulation that all flavored milk shall be fat-free to meet minimum federal guidelines.
- Taking into consideration all of the public comment received, with careful thought to the impact on our schools and students, we believe the revised regulation will bring Massachusetts closer to alignment with federal guidelines while maintaining Massachusetts' high standards of promoting and protecting the health of our students.