



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

Tel: 617-624-5200
Fax: 617-624-5206
www.mass.gov/dph

DEVAL L. PATRICK
GOVERNOR

JOHN W. POLANOWICZ
SECRETARY

CHERYL BARTLETT, RN
COMMISSIONER

August 14, 2014

Dear Superintendent,

In June 2013, USDA released 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*, which sets minimum federal nutrition standards for competitive foods and beverages.

Following the release of the federal regulations, the Department of Public Health (DPH or the Department) has been reviewing the existing Massachusetts standards for competitive foods and beverages at 105 CMR 225.000 to identify opportunity for alignment with the federal standards. This analysis has incorporated feedback from industry experts, school nutrition personnel, and the Department of Elementary and Secondary Education. Because the existing Massachusetts standards do not meet the minimum federal standards in all categories, we have proposed revisions to those portions of the regulations to make the Department's regulations consistent with their federal counterparts. The proposed amendments to the Massachusetts regulations were presented to the Public Health Council on August 13, 2014. There is an opportunity for public comment at a public hearing on Tuesday, September 9, 2014 at 4pm as well as in writing until 5pm on Friday, September 12, 2014. Please visit <http://www.mass.gov/eohhs/gov/laws-regs/dph/proposed-regulations/school-nutrition-standards.html> for details.

Recognizing that the new Massachusetts regulations are not in effect by the July 1, 2014 federal deadline, DPH is issuing this guidance to address any conflicting requirements between federal and state regulations. In cases where there is not alignment, the stricter standard should apply during the timeframe in which our state regulations are going through the amendment process. Specifically, schools should continue to comply with all provisions of the Massachusetts regulations with the exception of the following five areas in which the federal rules are more stringent than the existing state regulations:

General Standard for Competitive Foods

To be allowable, a competitive food item must meet all proposed competitive food nutrient standards and

- be a grain product that contains 50% or more whole grains by weight or have whole grains as the first ingredient*;

or

- have as the first ingredient* one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.);
or
- be a combination food that contains ¼ cup of fruit and/or vegetable;
or
- for the period through June 30, 2016, contain 10% of the Daily Value (DV) of a naturally occurring nutrient of public health concern (i.e., calcium, potassium, vitamin D or dietary fiber).

*If water is the first ingredient, the second ingredient must be one of the above.

Exemptions:

- Fresh, frozen and canned fruits and vegetables with no added ingredients except water or 100% juice; and
- Canned vegetables that contain a small amount of sugar for processing purposes.

Calories

Entrée items sold a-la-carte must contain no more than 350 calories, including accompaniments, unless they meet the exemption for NSLP/SBP entrée items.

Accompaniments

Accompaniments must be included in the nutrient profile as part of the item served to determine if an item meets the nutrition standards for competitive food.

Timing

The requirements apply from midnight before the school day begins to 30 minutes after the official school day ends.

Milk

Low-fat milk must be plain.

We appreciate your patience as we make our existing regulations consistent with the most recent federal rules and offer the best guidance to promote the health and well-being of our students. If you have any questions about this guidance, please contact Claire Santarelli at claire.santarelli@state.ma.us or 617-624-5422.

Sincerely,



Cheryl Bartlett, RN
Commissioner