

Inspection of School Kitchens

Proposed Amendments to 105 CMR 590.000

Public Health Council
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Suzanne K. Condon, Director

Bureau of Environmental Health

Outline

- I. Background
- II. Proposed amendments
- III. Public Comments and MDPH Responses
- IV. Implementation schedule
- V. Questions

The School Nutrition Law

Overview of Key Elements of Law – previously presented to the Council

- Requires **nutritional standards** for “competitive foods” in public schools
- Requires regulations to promote school **wellness advisory committees**
- Requires **training of public school nurses** in screening and referral for obesity, diabetes and eating disorders
- Establishes **Commission on School Nutrition and Childhood Obesity**

Background

M.G.L. c. 111, s. 222(g) enacted in 2010

Requires MDPH to promulgate regulations requiring local health officials to conduct food safety inspections at public schools . . . with the frequency required by state and federal law, or as a result of public complaint or food recall, and to track and report the results of these inspections for each school to MDPH and DESE, including any violations and steps to remediate the violations.



Proposed Amendments

- New definition added to 105 CMR 590.002:
 - **590.002(B): School kitchen**

“School kitchen” means the kitchen area used during the course of the regular school day to prepare or serve breakfast, lunch, or dinner to students in an elementary, middle, high, charter, or innovation school operated by a public school district or board of trustees pursuant to chapter 71. “School kitchen” does not include:

 - (a) Kitchens used by culinary arts programs,
 - (b) Kitchens used exclusively for or by faculty or staff, or
 - (c) Kitchens used to prepare or serve food outside of the regular school day.

Proposed Amendments

- Inspection amendments to 105 CMR 590.013:
 - Statute requires inspections to be conducted with frequency required by state and federal law
- Proposed regulations require inspections:
 - At least once every 6 months, and
 - At least twice *during the school year [new]*
 - *Less frequent inspections not permitted [new]*

Proposed Amendments

- Inspection amendments to 105 CMR 590.013(B)(2):
 - **Statute requires an inspection “as a result of public complaint or food recall.”**
- Proposed regulations: An additional inspection or investigation is required when the local board of health:
 1. Receives a public complaint about the school kitchen, **“but this shall not include any complaint regarding any violation of 105 CMR 225.000: Nutritional Standards for Competitive Foods and Beverages in Public Schools,”** or
 2. Is notified by the permit holder or the Department that food products used at the school kitchen are the subject of a recall notice.

Proposed Amendments

- Boards of health do not have authority over the nutrition standards. These standards are in a separate set of regulations.
- MDPH's Nutrition Program is working on a guidance document to help school districts comply with the nutrition standards.
 - The School Nutrition law requires school districts to be in compliance.
 - MDPH encourages local oversight by school district administration and wellness committees.
 - A monitoring protocol is currently in development in conjunction with the new USDA requirements for school meals and competitive foods. These efforts are being led by the Bureau of Community Health and Prevention.

Proposed Amendments

Record-keeping changes in 590.013(E) and 590.010(F)

•590.013 (E)

- Statute requires tracking and reporting the results of these inspections for each school to DPH and DESE, including any violations and steps to remediate the violations

•590.010(F)(2): Reporting Requirements

- Upon request of either the Department of Public Health or the Department of Elementary and Secondary Education, the board of health shall report the results of each school kitchen inspection and investigation, including any violations and steps to remediate the violations, pursuant to M.G.L. c. 111, § 222(g).

Proposed Amendments

- **590.013(G): Public Records**
 - Statute states that all reports and information collected or received by MDPH and DESE are public records
 - Proposed regulations state that this information shall be made available for public disclosure, unless exempted by law

Public Hearing/Comment Process

- The proposed amendments were presented to the Public Health Council on May 11, 2011.
- A Public hearing was held in Boston on June 23, 2011.
- The period for written testimony closed on July 1, 2011
- MDPH received two written comments and no oral testimony.

Public Hearing/Comment Process

Comment	Source	Response
Proposed changes are unfunded mandates that Boards of Health can not cover because public schools are exempt from licensing fees.	Philip Leger, Town of Athol	Regulation does not impose an unfunded mandate because Boards of Health are currently required to inspect school kitchens twice per year.
Requiring inspections to be six months apart during the school year makes it impossible to inspect in Jan-Feb (slow period) because school is not open in Jul-Aug (6 months later).	MHOA	Regulation clarifies that inspections must be conducted during the school year in order to be consistent with the new statutory requirements.

Update since May 11, 2011

Comment	Source	Response
Requirement to provide inspection results if requested by DPH or DESE is an unfunded mandate that will take time away from other duties.	MHOA	Boards of Health are already required to provide copies of public documents upon request.
Requirement to inspect because of food recall notifications is an unfunded mandate that will take time away from other duties.	MHOA	The regulation as written allows Boards of Health to conduct an investigation (a less time consuming inspection) rather than a full inspection in response to a recall notice.
Not necessary to state that reports and information collected during inspections are public records.	MHOA	Regulation reinforces public record requirements consistent with the new statutory requirements.

Unfunded Mandates Issue

- According to the Supreme Judicial Court, unfunded mandates do NOT include “relatively minor expenses related to the management of municipal services . . . subordinate consequences of . . . primary obligations.” This means:
 - If localities have historically been required to do something (inspect school kitchens), then new details, even if they impose some additional costs, are not considered new mandates.
 - These regulations clarify existing requirements and impose very few new responsibilities

Implementation Schedule

- MDPH requests final adoption of 105 CMR 590.000, as amended
- If approved, MDPH will file 105 CMR 590.000, as amended, with the Secretary of State for publication in the Massachusetts Register on October 28, 2011

Questions?