

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUL 15 8 44 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WEST VIRGINIA BOARD OF EDUCATION TITLE NUMBER: 126

RULE TYPE: Procedural; CITE AUTHORITY WV Const. Art. XII §2
WV Code 18-2-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 85 (Policy 4320)

TITLE OF RULE BEING AMENDED: Operational Manual of Child
Nutrition

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 18, 1993 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Dr. Harriet Deel, Director
Office of Child Nutrition
West Virginia Department of Education
Build. #6, Room B-248
1900 Kanawha Blvd. E.
Charleston, WV 25305-0330

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Barbara L. Fox
July 14, 1993

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

5-7-00

FISCAL NOTE WORKSHEET

HD NO _____ DRAFT NO _____ BILL NO _____ RESOLUTION NO _____

SUBJECT Child Nutrition Policy Manual 4320 FUND General

SOURCE OF REVENUE: GENERAL SPECIAL OTHER (SPECIFY) _____

COST ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

INCOME ESTIMATE BASED ON: AN ORIGINAL ESTIMATE BUDGET BILL OTHER (SPECIFY) _____

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 AND ITEM 3 GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

EFFECT OF PROPOSAL	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
1. ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0		
PERSONAL SERVICES	\$ 0	\$ 0			
CURRENT EXPENSES					
REPAIRS AND ALTERATIONS					
EQUIPMENT					
OTHER					
2. ESTIMATED TOTAL REVENUES	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

IMPACTS No direct fiscal impact.

FISCAL: The policy implements federal Programs under the National School Lunch Act and Child Nutrition Act, which generates approximately 50 million annually for West Virginia.

STATE

STAFF: Harriet Deel
Thomas Sands

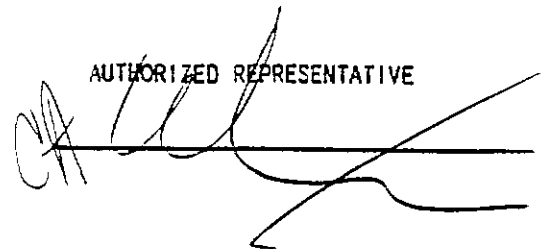
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

June 24, 1993 West Virginia Department of Education

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FILED

EXECUTIVE SUMMARY

POLICIES OF OPERATION MANUAL
CHILD NUTRITION PROGRAMS

Series 85, Policy 4320

JUL 15 8 44 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PUBLIC COMMENT PERIOD ENDS: August 18, 1993 Adopted _____

BACKGROUND:

Policy 4320.85, Policies of Operation Manual, interprets regulations regarding School Breakfast, School Lunch, Donated Foods, Special Milk and Free/Reduced Price Meal applications. Further, it provides policy regarding financial management as set forth in Office of Management and Budget Circular A-102. It also details federal requirements of the Coordinated Review Effort (CRE).

PURPOSE:

The proposed revisions are intended to update the policy to reflect changes in United States Department of Agriculture regulations for the various Child Nutrition Programs for the public schools of West Virginia. It operationalizes Federal Code 7 CFR Part 210, 215, 220 and 245 that requires state administering agencies to assist local educational agencies in program management and accountability.

This policy, Series 85, Policy 4320, provides local school districts the required revisions needed in order to comply with accountability regulations and other regulatory changes.

CONTENTS:

- Specific language required in the appeal process has been added.
- The release of student information obtained from free/reduced price meal application is discussed.
- A schedule of reporting deadlines is included.
- The Assessment, Improvement and Monitoring System (AIMS) has been replaced by the Coordinated Review Effort (CRE).
- Minor editing changes have been made to make the policy more readable.

IMPACT:

The policy requires no additional financial outlay. Rather, it provides assistance in management practices and federal accountability requirements.

Policy 4320: Rules and Regulations for Child Nutrition Operations

The West Virginia Board of Education provides assistance to county boards of education in operation of federally funded child nutrition programs in schools. The Board's approval of policy 4320 will transmit federal regulatory revisions to school administrators, food service supervisors and others concerned with quality and accountability of child nutrition programs in schools.

TITLE 126
PROCEDURAL RULE
WEST VIRGINIA BOARD OF EDUCATION
CHAPTER 18-2
SERIES 85
POLICY 4320

Title: Operational Manual of Child Nutrition

Section 1. General

- 1.1 Scope - This procedural rule establishes operational procedures that enhances child nutrition and provides for an efficient operation of the program. The procedures cover the child nutrition program and the school breakfast and school lunch programs.
- 1.2 Authority and Related Code Citation(s) - W. Va. Const. Art. XII, § 2, and W. Va. WV Code 18-2-5
- 1.3 Filing Date -
- 1.4 Effective Date -
- 1.5 Repeal of Former Rules - None - This is a revision of former rules filed in 1983, revised in 1992.

Section 2. Incorporation by Reference

- 2.1 Copy of rules and regulations are attached. Copies may be obtained in the office of the Secretary of State and the West Virginia Department of Education, Bureau of Finance and Services.
- 2.2 Summary of rules and regulations below:

SUMMARY OF RULES AND REGULATIONS

State Board Policy Number 4320 authorizes the Child Nutrition Program/Policy Operation Manual to comply with the federal requirements and other State Board policies as these relate to the overall administration of Child Nutrition Programs. The manual is revised and updated periodically.

The Child Nutrition Program/Policy Operation Manual is distributed to school administrators and other personnel involved with the operations of Child Nutrition Programs. The Manual provides vital technical assistance and guidance and contains all state and federal policy statements and program regulations.

Information in the Child Nutrition Program Policy Manual includes the Department philosophy and goals for nutrition and nutrition education for West Virginia children. In addition, the Manual includes state and federal meal requirements for school breakfast and lunch, special milk regulations and instructions for claiming federal reimbursement for eligible meals and milk. There are instructions for completing required records and reports and for handling government donated foods.

Specifications related to financial management include allowable and non-allowable costs, federal procurement regulations, nonprofit status, federal audit requirements including the ~~Assessment,--Improvement--and Monitoring-System~~ (AIMS) Coordinated Review Effort (CRE).

This Manual provides federal eligibility guidelines for free or reduced price meal benefits, and federal requirements for verification of meal applications. Information regarding Civil Rights requirements are included. Policies are detailed which apply to emergency feeding, competitive food sales, catered meals for senior citizens, food service for handicapped children and regulatory provisions for parent and student involvement.

Recommendations for personnel training are described and programs available from the Department of Education are outlined.

COORDINATED REVIEW EFFORT (CRE)
COMPLIANCE

CRITICAL

To be in compliance with CRE's critical review areas, School Food Authorities (SFA's) must do the following:

- Have each child's eligibility for free or reduced price meals correctly approved.
- Have a system to issue benefits and to update the eligibility of children approved for free and reduced price lunches.
- Serve lunches that contain the required food items.
- Base claims for reimbursement on accurate lunch counts, by category, taken at the point of service.
- Record, consolidate and report lunch counts on the claim for reimbursement correctly.

GENERAL

To be in compliance with CRE's general review areas, SFA's must do the following:

- Follow the procedures identified in the free and reduced price policy statement.
- Verify the correct number of free/reduced price meal applications by December 15; make applicable status changes; submit SFA summary report to the state agency by January 10.
- Serve lunches that provide the required amounts of food.
- Make sure that no child is denied benefits or discriminated against because of race, color, national origin, age, sex or handicap.
- Make sure on-site reviews of each school's meal counting system are conducted by February 1.
- Check each school's meal counts before submitting the claim for reimbursement to the State Agency.
- Submit reports and keep records as required.

ASSESSMENT, -IMPROVEMENT-AND-MONITORING-SYSTEM-(AIMS)
SECOND-REVIEW

School-Feed-Authorities-(SFAs)-found-to-exceed-second-review threshold-for-Performance-Standards-2,3-and-4-must-have-second reviews.--The-first-and-second-reviews-are-to-be-conducted-within the-same-school-year,-if-possible.--However,-second-reviews-shall be-completed-no-later-than-December-31-of-the-year-following-the year-of-the-first-review-

The-West-Virginia-Department-of-Education-(WVDE)-must-assess-and recover-funds-on-newly-discovered-or-continuing-performance standard-deficiencies-whether-they-exceed-a-second-review threshold-or-not.--Corrective-action-plans-must-be-amended-or extended-if-any-performance-standard-second-review-threshold-is exceeded-on-second-reviews-

The-WVDE-will-conduct-follow-up-reviews-to-ensure-compliance-with second-review-threshold-deficiencies-

SCHOOL FOOD AUTHORITY (SFA) FISCAL ACTION APPEAL

School Food Authorities (SFAs) may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment resulting from a State agency-conducted review under the auspices of the Coordinated Review Effort (CRE).

AIMS-EXIT-CONFERENCE

Following an AIMS review, WVDE representatives will conduct an exit conference with officials of the SFA to:

- discuss deficiencies observed;
- describe the extent of the deficiencies; and
- outline corrective action needed (this must include, if necessary, amending the claims for reimbursement for the period reviewed).

When a second review threshold is exceeded, a discussion of a formal corrective action plan takes place. After each AIMS review, the WVDE must submit written notification to the SFA superintendent informing this person of the findings and of corrective action needed, if any. The WVDE is to provide SFAs a clear understanding of all performance standards and the SFA must document all corrective action.

Formal corrective action plans must include:

- corrective action needed (amendment of claims for reimbursement for the review period);
- time frame for completion; and
- signature of SFA representative.

The WVDE must:

- assist the SFA in the development of the corrective action plan; and
- approve and sign the plan within 60 days of the noncompliance.

When it is necessary for the WVDE to assess and recover money from overclaims on meals milk served, adjustments are usually made by the WVDE finance office.

NON-COMPLIANCE REQUIREMENTS

CORRECTIVE ACTION

Corrective action is taken for any non-compliance noted in Coordinated Review Effort's (CRE's) critical or general areas.

FISCAL ACTION

Fiscal action is taken for any non-compliance which exceeds the threshold. However, fiscal action amounting to less than \$600.00 may be waived.

FOLLOW-UP REVIEWS

Follow-up reviews are conducted when the threshold has been exceeded for CRE performance standards 1 and/or 2.

SECOND-REVIEW-THRESHOLD

Corrective Action Plans will be completed by all School Feed Authorities which are found on first reviews to exceed their second-review-threshold.

The second-review-threshold is exceeded when:

1. For P.S.-2; if one school reviewed in an SFA claimed reimbursement for more free or more reduced-priced meals, respectively, than the number of children correctly approved for such meals for the review period times the days of operation times the attendance factor used by the SFA.
2. For P.S.-3; if one school reviewed in an SFA does not have an adequate system for counting and/or claiming free-reduced-paid-meals-for-reimbursement; or the SFA does not use valid procedures for consolidating claims.
3. For P.S.-4; 10 percent or more of the total meals observed in a school-food-authority are missing one or more components.

STATE AGENCY ADDENDUM

GENERAL AREAS - School

- Point of Service Meal Counts
- Monitoring
- Internal Control
- Cash Management
- Meal Quality
- School Environment
- Food Service Management Company

GENERAL AREAS - School Food Authority

- System for consolidating the claim for reimbursement
- Financial Management

Performance Standards

3. The system for counting and claiming meal totals for paid, free and reduced meals claimed for reimbursement at both the School Food Authority (SFA) and school is accurate.

4. Meals claimed for reimbursement within the SFA contain food components (and quantities) as required by regulations.

Review Process

Reviewers will observe and analyze the school's counting and recording system.

Reviewers check monitoring reports by the SFA.

Reviewers check to see if the system (point of service and payment options) prevents overt identification.

The school's system for collecting, counting, receipting and depositing of money is reviewed.

The school's claim for reimbursement is reviewed for accuracy.

The SFA's system for consolidating the claim for reimbursement is reviewed for accuracy.

On-site observation of meal preparation, meal service, a review of past menus and production records, availability of Child Nutrition (CN) labels for prepackaged, prepared or frozen food items served.

Fiscal action shall be taken on both first and second reviews for any degree of violation of AIMS Performance Standard 2-3-4.

COORDINATED REVIEW EFFORT
(CRE)

The Coordinated Review Effort (CRE) critical areas include performance standards 1 and 2. The two performance standards are designed to address the accountability and nutritional integrity facing the Child Nutrition Programs as identified by existing management and monitoring tools available to United States Department of Agriculture (USDA).

CRITICAL AREAS

Performance Standard 1

- Eligibility Certification
- Benefit Issuance
- Updating Eligibility
- Counting and Claiming
- Lunch counts combined and recorded correctly

Performance Standard 2

- Components available to all students
- All observed lunches claimed for reimbursement contained the required number of food items.

The CRE reviews include other areas of Program operations that are important for Program accountability.

GENERAL AREAS

- Free and Reduced Price Process
- Meal Patterns
- Civil Rights
- Monitoring Responsibilities
- Reporting and Recordkeeping

AIMS-REVIEW

The four performance standards are designed to address the major problems of accountability and nutritional integrity facing the child nutrition programs as identified by existing management and monitoring tools available to USDA.

Performance Standards

1. Within the SFA, each student's application for free and reduced price meals is correctly approved or denied in accordance with the application provisions:

- total household income;
- names of all household members;
- social security number of the adult household member who signs the application or an indication that there is none; and
- signature of an adult member of the household.

Applications from families receiving food stamps or aid for dependent children need only provide:

- child's name;
- AFDC or FS number; and
- parents signature.

2. The number of free reduced price meals claimed for reimbursement by each school is equal to the number of meals which are served to children who are correctly approved for free and reduced price meals.

Review Process

Reviewers check that each application is current and correct (WVDE-43-10-20

Master lists are compared with current and correct applications on file. --WV 43-10-30-S-(G---30-1)-reviewed.

The number of correct free and reduced applications for the review month is multiplied by the ADA factor which is multiplied by the number of operating days and compared against the number of meals claimed. --If number claimed exceeds number claimable, fiscal action is taken.

CRE
COORDINATED REVIEW EFFORT

The United States Department of Agriculture (USDA) has replaced AIMS (assessment, improvement and monitoring system with CRE (coordinated review effort) for monitoring the accountability of the National School Lunch Program. Public Law 101-147, enacted November 10, 1989, required changes in the review of the National School Lunch Program. Federal regulations mandated a unified accountability system, called the Coordinated Review Effort, or CRE, effective in the 1992-93 school year.

Cre is a two part review process which includes critical and general areas. A standard review form is used to ensure that the critical areas are reviewed in the same manner for all schools. School Food Authorities (SFAs) are reviewed once every 4-year cycle.

AIMS-MONITORING

In 1978, the USDA Inspector General expressed to the USDA Assistant Secretary for Food and Consumer Services, a concern that deficiencies fundamental to the operation of the FNS programs had been found to continually occur in program entities audited by the Office of Audit, USDA. Several deficiencies that had been repeatedly encountered in child nutrition programs were:

- overstated meal counts;
- meals claimed for free-reduced-price reimbursement not supported by approval applications; and/or
- meals not meeting USDA meal pattern requirements.

These uncorrected deficiencies had generated large dollar losses to the USDA according to the Inspector General. Consequently an appropriation was earmarked "for activities including audits, to identify and take any needed corrective action concerning administrative problems in the school feeding programs---such as non-compliance with meal standards or eligibility criteria and the submission of reimbursement claims which exceed actual meal costs".

The USDA proposed an Assessment, Improvement and Monitoring System (AIMS) to be implemented within the state agencies to assist them in identifying operational and management problems in the administration of child nutrition programs and to take corrective action when needed.

The objectives of AIMS are:

- to analyze current school lunch program management by state agencies;
- to foster improvements in program management by states;
- to monitor effectively the use of USDA funds; and
- to protect the nutritional integrity of meals served.

AIMS requires each state to monitor its child nutrition programs on a four-year cycle. States are required to identify problems in the management of child nutrition programs by SFAs and to initiate corrective action in order to comply with four performance standards.

AIMS Regulations have been amended and were final on March 28, 1989.

REPORTING DEADLINES

WVDE 43-10-30 (Monthly Claim for Reimbursement) - Monthly claims for reimbursement are due the 10th of the month succeeding the monthly period being claimed. Payment of claims received after the cut-off date will not be paid until the following month. Claims submitted after the federally mandated 60-day cut-off cannot be processed unless authorized by the United States Department of Agriculture.

WVDE 43-10-31 (Monthly Financial Report) - Financial data is to be collected and documented monthly on the WVDE 43-10-31 (Monthly Financial Report), however, submission of this information to the West Virginia Department of Education is required quarterly on the following dates.

<u>October</u>	<u>15th</u>
<u>January</u>	<u>15th</u>
<u>April</u>	<u>15th</u>
<u>July</u>	<u>15th</u>

WVDE 43-10-32 (Annual Report) - The West Virginia Department of Education will collect year-end information through the use of an Annual Report Questionnaire. The questionnaire will be mailed to each county board of education during the month of June. Data collected on the questionnaire and information reported on the Monthly Financial Report will be used to generate an Annual Report. The Annual Report will be constructed at the state level and sent to each county school board for verification by the county's food service director and treasurer/school business official.

The correct and complete Annual Report shall be on file at the West Virginia Department of Education prior to September 30th of the following fiscal year. Claims for reimbursement will not be processed pending proper completion and acceptance of the prior year's Annual Report.

RELEASE OF INFORMATION

Information obtained from families on the free/reduced lunch forms is to be used for determining student's eligibility for meal benefits.

This information may also be used to determine eligibility for free textbooks, workbooks and school supplies, and to provide student information to access Medicaid information. The release of this information may only be authorized by the guardian in Section VII of the application.

VERIFICATION PROCEDURES

To provide a uniform method for obtaining information for verification, forms will be sent to the household. The suggested letter [F - 30.12] should be duplicated on each school's letterhead. The letter is to be accompanied by the parent information form, Proof of Income [F - 30.13].

Procedures for developing a consistency check for verification [F - 30.14] will provide a uniform method for verifying information on free/reduced meal applications.

Notations should be made on all applications reviewed indicating date and findings.

Following the consistency check, if there is a difference between documentation and application, the household must be informed of the findings [F - 30.15]. This must be accompanied by a new free/reduced price meal application. When the revised application has been approved or denied the household is shall be notified within 10 working days.

When the verification procedure has been completed, a School Summary Report [F - 30.16] shall be sent to the School Food Authority (SFA) and a copy filed at the school.

The SFA shall compile all School Summary Sheets [F - 30.16] and send a copy of Sponsor's Summary Report [F - 30.17] to West Virginia Department of Education (WVDE).

REVIEWING OFFICIAL'S RESPONSIBILITIES

The reviewing official is responsible for ensuring that applications have been classified correctly by category of eligibility. If the reviewing official is authorized by the School Food Authority (SFA) to delegate the responsibility for reviewing applications, then the person so designated shall be informed about program requirements and policy. Since the SFA official who signed the policy statement agreement with the State agency ultimately is responsible for the integrity of the approval process, the principal's signature stamp may be used. A suggested alternative would be to place a statement in the school's files as to the name and/or title of the designee, who would then be permitted to sign the applications without having to use the principal's signature stamp.

The reviewing official may request verification of information submitted on any application under the following circumstances:

- a written, signed complaint;
- illegible, incomplete or questionable information on the application; and/or
- the United States Department of Agriculture (USDA) required verification sampling.

Indication of approval or denial shall be sent to parents or guardians within ten working days after receipt of the completed application.

Reviewing officials cannot sign the parent's/guardian's name to an application completed by the parents or guardians but must return the application for the proper signature.

A fair hearing procedure shall be established for parent's appeals concerning eligibility determination and for school official's challenges. The Parent and/or guardian has ten (10) days to appeal the decision of school officials. During an appeal or hearing, the student shall continue to receive free or reduced price meals. Standard hearing procedures are outlined in the Policy Statement [A - 30.2].

Other questions pertaining to free/reduced price meal policies are answered in the (Eligibility Guidance for School Meal Programs [F - 30.5].)

COMMENT LOG
POLICIES OF OPERATION MANUAL, CHILD NUTRITION PROGRAMS
(POLICY 4320)

Directions: Please use this form in commenting by section on the proposed policy and regulations on Policies of Operation Manual, Child Nutrition Programs.

NAME OF INDIVIDUAL/ORGANIZATION _____

ADDRESS _____

Proposed Policy	
Section F Free And Reduced Price Meal And Free Milk Policies	
Section G Financial Management	
Section H Monitoring And Auditing	

Please submit comments by August 18, 1993 to:

Harriet Deel, Director
Office of Child Nutrition
West Virginia Department of Education
Building 6, Room 248
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0330