

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #5

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**FILED**

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W.Va. Const., Article XII, §2 and W.Va. Code §18-2-5.

RULE TYPE: PROCEDURAL X INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §§29A-3B-1, et seq.; W.Va. Board of Education v. Hechler  
180 W.Va. 451; 376 S.E.2d 839 (1988)

AMENDMENT TO AN EXISTING RULE: YES X, NO \_\_\_\_\_

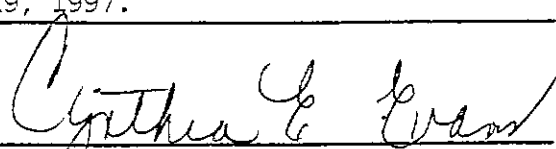
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 85

TITLE OF RULE BEING AMENDED: Policies of Operation Manual, Child  
Nutrition Programs (4320)

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: \_\_\_\_\_

TITLE OF RULE BEING ADOPTED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS November 19, 1997.

  
Cynthia E. Evans  
Director, Legal Services

**EXECUTIVE SUMMARY**  
**POLICIES OF OPERATION MANUAL**  
**CHILD NUTRITION PROGRAMS**  
**Series 85, Policy 4320**

**PUBLIC COMMENT PERIOD ENDED: September 19, 1997 Adopted October 9, 1997**

**BACKGROUND:**

Policy 4320, *Policies of Operation Manual, Child Nutrition Programs*, 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 Parts 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:**

- Program history has been deleted.
- Glossary of Terms has been updated.
- Yogurt has been added as a meat alternate for meals.
- Meal patterns have been revised to allow grain-based desserts to be credited as bread alternates under specified conditions.
- Nonexpendable equipment has been redefined to reflect an acquisition cost of \$5,000 or more.
- Editing changes have been made to reflect standard size and format for Department rules and procedures.

**IMPACT:**

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

The comment period, ending September 19, 1997, resulted in no comments being received. I respectfully request that the proposed revisions for the *Policies of Operation Manual, Child Nutrition Programs*, Policy 4320, be adopted by the State Board of Education.

**TITLE 126  
PROCEDURAL RULE  
BOARD OF EDUCATION**

**SERIES 85  
Policies of Operation Manual  
Child Nutrition Programs (4320)**

**§126-85-1. General.**

1.1. Scope. -- This procedural rule establishes operational policy that enhances child nutrition and provides for an efficient operation of the programs. The procedures relate to the school breakfast, school lunch, special milk, after-school care and nutrition education programs.

1.2. Authority. -- W. Va. Const., Art. XII, §2, and W. Va. Code §18-2-5.

1.3. Filing Date. -- October 20, 1997.

1.4. Effective Date. -- November 19, 1997.

1.5. Repeal of former rule. -- This legislative rule repeals and replaces WV 126CSR85 (Policy 4320).

**§126-85-2. Mission and Purpose.**

2.1. The mission of the Office of Child Nutrition is to enhance learning and quality of life through nutrition education and nutrition services.

2.2. The primary purpose of the food service program is to provide the opportunity to meet each participant's nutritional needs, the child in school, the child in institutional surroundings, the special needs child; the child in day care and the functionally impaired adult in day care. An effective nutrition program makes available to all participants a nutritionally adequate, affordable breakfast and lunch that support health and learning. Snacks are added as needed for the participants.

2.2.1. All meal service in the dining area shall conform to the nutritional standards prescribed and shall be priced and served as a unit. Any other food or beverage served at any time during the day shall provide protein, vitamins and minerals in a satisfactory balance with calories in order to contribute to the nutritional quality of the meals served.

2.2.2." Non-nutritious foods, namely candy, soft drinks, chewing gum and flavored ice bars, shall not be sold during the school day (i.e., that period of time between the arrival of the first child at school and the end of the last scheduled instructional period) except that, county boards may permit the sale of soft drinks in county high schools except during breakfast and lunch periods. The sale of such soft drinks shall be in compliance with the rules of the National School Lunch Program and the School Breakfast Program of the State Board and the nutrition service of the United States Department of Agriculture. Seventy-five percent of the profits from the sale of soft drinks shall be allocated by a majority vote of the faculty senate of each school and twenty-five percent of the profits from the sale of soft drinks shall be allocated to the purchases of necessary supplies by the principal of the school.

### **§126-85-3. Operational Definitions.**

3.1. "Act" is defined as the National School Lunch Act, as amended.

3.2. "ADA" means average daily attendance.

3.3. "Adult" is defined as staff members and employees of a school or child care institution including all faculty, supervisory, post secondary students, student teachers and other personnel.

3.4. "Adult breakfast" is defined as a breakfast that is sold to an adult for the full price as established by the state and local board of education.

3.5. "Adult lunch" is defined as a lunch that is sold to an adult for the full price as established by the state and local board of education.

3.6. "Appeal" is defined as the right of appeal by a parent or guardian, child or school or county employee to the state superintendent for an impartial decision.

3.7. "Assessment procedure" is defined as procedure whereby money is reclaimed from a school when a finding is made by the West Virginia Department of Education (WVDE) or United States Department of Agriculture (USDA).

3.8. "Assisted NuMenus (Assisted Nutrient Standard Menu Planning)" is defined as a flexible menu planning system whereby foods in unspecified quantities may be used to meet the nutrition goals and specific nutrient standards. The meals are analyzed by an agency such as the W. V. Department of Education or a consultant outside the SFA or school as a part of the menu planning process.

3.9. "Breakfast" is defined as a meal meeting the requirements set forth in federal and state regulations and served to a child at or near the beginning of the school day. Schools may serve breakfast for an extended period of time or at different times during the morning hours.

3.10. "CACFP" means Child and Adult Care Food Program.

3.11. "Categorical eligibility" is defined as a child for whom food stamps or Temporary Assistance for Needy Families (TANF) is received and is automatically eligible for free meals when the household provides a current food stamp or TANF case number on the application. If application is made for another child in the household who does not come under the TANF grant or who is not a member of the food stamp household, eligibility for the non-categorically eligible child must be determined on a household size/income basis. Household size would include both the TANF/food stamp members and the non-TANF/food stamp members.

3.12. "Certificate of noncollusion" is defined as a statement signed by a bidder and submitted with her/his bid to affirm that her/his bid is made freely without consultation with any other bidder.

3.13. "Certification" is defined as the process by which recognition is granted an individual who has met and continues to meet certain specific standards established by the ASFSA.

3.14. "Certification regarding debarment, suspension, ineligibility and voluntary exclusion" is defined as certification by a vendor that the firm or company has not been suspended or debarred or in any way ineligible to participate in a federal nonprocurement program.

3.15. "Child" is defined as a student of high school grade or under who is enrolled in an educational unit of a school. West Virginia state law extends this age to 21 for programs for exceptional children.

3.16. "CN" means Child Nutrition.

3.17. "CN label" is defined as a voluntary federal labeling program that states the products' contribution to the meal pattern requirements; usually found on commercially prepared, individual portioned food products.

3.18. "Compelling circumstances" is defined as the overwhelming pressures of essential or environmental factors that cause a school to request the state superintendent to consider a waiver of the requirement to operate a program.

3.19. "Components" is defined as the constituent parts of a meal. The lunch pattern requires four components: meat or meat alternate, vegetables or fruits, bread or bread alternate and milk. The breakfast pattern contains three or four components: fruit or vegetable, bread or bread alternate, meat or meat alternate and milk.

3.20. "Cost of milk" is defined as the net purchase price paid by the school or child care institution to the milk supplier for milk delivered to the school or child care institution. This does not include the amount paid to supplier for servicing, rental of or installment purchase of milk service equipment.

3.21. "CRE" means coordinated review effort and is a comprehensive evaluation of all School Food Authorities participating in the Program. The review includes critical and general areas of review. Additionally, CRE reviews include other areas of Program operations determined by the WVDE to be important to Program performance. CRE sets forth a unified Federal and State monitoring system that is expected to improve Program management through enhanced monitoring and corrective action. CRE reviews are expected to eliminate overlapping review activity between Federal and State agencies.

3.22. "Current income" is defined as income received during the month prior to application for free or reduced-price meals and multiplied by 12. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

3.23. "DA (Distributing Agency)" means the agency responsible for donated foods - Department of Health and Human Resources.

3.24. "Debarment" is defined as a shutting out or exclusion for cause (as a bidder from the list of qualified bidders).

3.25. "Depreciation" is defined as a reasonable allowance for the deterioration, wear and tear and obsolescence of non-expendable equipment used primarily in connection with the operation of a food service facility.

3.26. "Direct certification" is defined as a simplified method of determining some children's eligibility for free meals under the National School Lunch Program and School Breakfast Program, or free milk under the Special Milk Program without having the family complete a free and reduced price meal or free milk application. The Office of Child Nutrition obtains documentation from the State Department of Health and Human Resources and prepares appropriate computer sorts that enable the School Food Authority

(SFA) to match the names of children that are members of households currently certified to receive food stamps or TANF.

3.27. "Direct costs" is defined as expenses that are readily identifiable as the part of the total cost applicable to the school food service operation. (Examples: cost of food, cooks' salaries, supplies.)

3.28. "Distribution cost" (of Special Milk Program) is defined as direct expenses incurred by the school or child care institution in connection with the sale, handling or serving of milk.

3.29. "Donated Foods" is defined as agricultural commodities that the United States Department of Agriculture (USDA) makes available to various food program outlets including public and private schools and summer camps.

3.30. "Economic unit" is defined as a group of related or unrelated people who share housing and/or all significant income and expenses of its members.

3.31. "Edit Checks" is defined as a system of comparisons and calculations for individual schools and School Food Authorities (SFAs) to facilitate count/report accuracy and to identify potential problems in the meal count system.

3.32. "Emancipated student" is defined as a student living alone or as a separate economic unit that is considered a household of one. Therefore, only the student's income is considered for eligibility purposes.

3.33. "Enriched" is defined as a process by which the nutrients thiamin, riboflavin, niacin and iron are replaced in refined grains and grain products.

3.34. "Equipment" is defined as articles and physical resources other than land or buildings used for receiving, storing, preparing, transporting or serving food.

3.35. "Extra milk" is defined as milk sold to children exclusive of milk served as a component of the breakfast or lunch and for which no reimbursement is claimed.

3.36. "Family" is defined as a group of related or non-related individuals who are not residents of an institution or boarding house, but who are living as one economic unit.

3.37. "Fiscal year (Federal)" is defined as the period of 12 calendar months beginning October 1 and ending with September 30 the following calendar year.

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3.38. "Fiscal year (State)" is defined as the period of 12 calendar months beginning July 1 and ending June 30 the following calendar year.

3.39. "FNIC" means the Food and Nutrition Information and Educational Materials Center. The Center houses audio-visual and printed materials related to school food service.

3.40. "FCS" means the Food and Consumer Service of the United States Department of Agriculture (USDA).

3.41. "FNCSRO" means the Food, Nutrition and Consumer Service, Regional Office. In the case of West Virginia, it is the Mid-Atlantic Region with headquarters in Robbinsville, N.J.

3.42. "Food based menus" is defined as a USDA menu planning system whereby foods from specific food groups and in specific quantities are used to meet the nutrition goals and standards. The state agency analyzes menus from historical data (i.e. production records) as a method to verify compliance with the Dietary Guidelines for Americans.

3.43. "Food service management company" is defined as an organization other than a public or private nonprofit school with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program.

3.44. "Food service personnel" is defined as local school food service employees classified as Cook I, Cook II, Cook III and local food service managers.

3.45. "Food stamp household" is defined as any individual or group of individuals who is currently certified to receive benefits under the Food Stamp Program.

3.46. "Fortified" is defined as the addition of a nutrient to a food product to increase that nutrient's density above that normally found in the product. The addition of milk solids to low-fat milk to produce "protein fortified" milk is an example.

3.47. "Foster child" is defined as a child who is living with a family but who remains the legal responsibility of the welfare agency. Only the income received for foster care for the child should be considered for eligibility purposes.

3.48. "Free lunch or free breakfast" is defined as a lunch or breakfast for which neither the child nor any member of the child's family pays or is required to work in the school or in the school's lunch program. Federal reimbursement for a free lunch or

breakfast shall be claimed only for an eligible child with an approved application for free meals.

3.49. "High Schools" is defined, for the purposes of this rule, as a school with a grade configuration of 9-12, 10-12 or 11-12.

3.50. "Household" is defined as members of a family/household who live together and share expenses; a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but are living as one economic unit.

3.51. "Income standards" is defined as the family-size and income standards prescribed annually by the Secretary of Agriculture for determining eligibility for free and reduced-price meals under the National School Lunch Program and the School Breakfast Program.

3.52. "Indirect cost rate (also called non-restricted cost rate)" is defined as a pre-determined factor that will yield allowable indirect costs when applied to adjusted direct costs. This factor is assigned annually by the Bureau of Finance and Administration of the West Virginia Department of Education from data furnished by the County Boards of Education. Indirect cost rate for Private Schools and Residential Child Care Institutions (RCCI's) is ten percent.

3.53. "Indirect costs" is defined as those costs representing supporting services and incidental supplies that are furnished by general support services program of the school system. These costs, if properly documented, may be eligible costs of the food services and when added to direct costs, show the full cost of the food service operation.

3.54. "Medicaid" is defined as a government financed program of medical aid designed for those unable to afford regular medical services.

3.55. "Milk" is defined as pasteurized fluid types of unflavored whole milk, lowfat milk, skim milk or cultured buttermilk that meets state and local standards for such milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with state and local standards for such milk.

3.56. "NAC" means Nutrition Advisory Council.

3.57. "Needy children" is defined as children from families meeting the standards for free and reduced price meals.

3.58. "NET (Nutrition Education and Training Program)" means that in November, 1977, the Child Nutrition Act was amended to establish a system of grants to state

education agencies for the development of comprehensive nutrition information and education programs. Such nutrition programs shall freely use as a learning laboratory the school lunch and child nutrition programs.

3.59. "Net cash resources" is defined as money in the child nutrition account plus all money due the account less the amount of unpaid bills.

3.60. "Non-expendable equipment" is defined as tangible property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.

3.61. "Non-pricing program (Special Milk)" is defined as a program in which milk is not sold to children on a daily, weekly, monthly or annual basis. The milk is provided by funds from the institution, camp, school or in some cases by a tuition payment.

3.62. "Nonprocurement" refers to procurement actions undertaken by government grantees or subgrantees.

3.63. "Non-profit private school" is defined as a non-public school that is exempt from income tax under the Internal Revenue Code.

3.64. "Non-program adult meals" is defined as meals sold to adults not directly involved in the child nutrition program.

3.65. "Non-restricted cost rate" means Indirect cost rate.

3.66. "NSLA" means National School Lunch Act.

3.67. "NSLP" means National School Lunch Program.

3.68. "NuMenus (Nutrient Standard Menu Planning)" is defined as a flexible menu planning system whereby foods in unspecified quantities may be used to meet the nutrition goals and specific nutrient standards. The meals are analyzed by the SFA or school as a part of the menu planning process.

3.69. "Nutrient standard" is defined as the required level of calories and nutrients for a specific grade or age group.

3.70. "Nutrition Goals" refers to meeting 1/3 of the RDA for lunch, 1/4 of the RDA for breakfast, the Dietary Guidelines for Americans and calorie levels for specific ages or grade groups.

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3.71. "Nutritional standards" is defined as standards for meal patterns as prescribed by the WVDE.

3.72. "OA" means Office of Audit of USDA.

3.73. "Offer vs. serve" means that a senior high school student is not required to accept more than 3 of the 5 items of the school lunch. "Offer" means that the complete lunch is made available to students. The "Offer vs Serve" may be extended to junior high and elementary schools at the discretion of the local School Food Authority.

3.74. "OI" means Office of Investigation of USDA.

3.75. "OIG" means Office of Inspector General of USDA.

3.76. "OMB" means Office of Management and Budget.

3.77. "Paid breakfast or lunch" is defined as a breakfast or lunch that is sold to a child at the full price, as established by the county board of education.

3.78. "Perpetual inventory" is defined as a running record, up to date, of each item on hand in the storeroom.

3.79. "Physical inventory" is defined as the value of items on hand at the end of an accounting period (usually a month).

3.80. "Pricing program (Special Milk)" is defined as a program in which milk is sold to children and is paid for daily, weekly, monthly or annually. The price that children pay for milk will be lowered by making maximum use of the reimbursement.

3.81. "Processing contracts" is defined as an agreement between a processing company and the state distributing agency or between a processing company and a recipient agency whereby donated foods, made available by USDA, may be converted into end-products or components used in school meals.

3.82. "Product analysis sheet" is defined as a statement by the producer or distributor of a prepared entree specifying the amount of meal components supplied by a product. (For example, a statement by the distributor of a pizza product might read: "Each 4" X 6" slice of \_\_\_\_\_ pizza contains the equivalent of 2 oz. of meat/meat alternate, 1/8 cup vegetable, 1 slice enriched bread.")

3.83. "Program adult meals" is defined as meals served to adults who are directly involved in the operation and administration of the child nutrition program and are furnished at no charge.

3.84. "Public hearing" is defined as a hearing conducted by the school for the parents of the children enrolled in that school.

3.85. "RCCI (Residential Child Care Institution)" means Homes for mentally impaired, or emotionally disturbed children, unmarried mothers, orphanages; temporary shelters for abused or runaway children; and juvenile detention centers.

3.86. "Recertification" is defined as the process by which recognition is granted an individual who has met and continues to meet certain specific standards established by the ASFSA (See CERTIFICATION).

3.87. "RDA (recommended dietary allowance)" means a list of nutrients and the quantities needed daily for men, women and children published by the Food and Nutrition Board, National Academy of Sciences/National Research Council.

3.88. "Reduced price meal" is defined as a meal that meets the following criteria:

3.88.1. The price shall be less than the full price of the meal.

3.88.2. Currently in West Virginia the lunch is priced at 40 cents and the breakfast at 30 cents.

3.88.3. Neither the child nor any member of the child's family shall be required to supply an equivalent value in work for the school or in the school's food service.

3.88.4. Federal reimbursement for the school lunch or breakfast may be claimed only for a child with an approved and valid application for a reduced price meal.

3.89. "Regulation" is defined as a statement issued by a federal agency. It establishes requirements that must be met under laws passed by Congress.

3.90. "Reimbursement" is defined as financial assistance paid or payable to participating schools for lunches and breakfasts meeting the requirements of the USDA and the WVDE and served to eligible children with valid applications on file.

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3.91. "Revenue" is defined as the value of resources available to operate the food service program including cash funds (federal, state and local) and the value of goods and services contributed.

3.92. "SBP" means School Breakfast Program.

3.93. "School" is defined as an educational unit of high school grade or under operating under public or non-profit ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of pre-primary grade when they are conducted in a school having classes of primary grade or higher grade or when they are recognized as a part of the educational system in the state regardless of whether such pre-primary grade classes are conducted in a school having classes of primary or higher grade.

3.94. "School day" is defined as the time between the arrival of the first child at school and the end of the last scheduled instructional period.

3.95. "School in severe need" is defined as a school eligible for rates of reimbursement for free and reduced price breakfasts that are in excess of the current average payments.

3.96. "School Year" is defined as a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

3.97. "SDA (State Distributing Agency)" is responsible for donated foods - West Virginia Department of Health and Human Resources.

3.98. "Section 4" is defined as the section of the National School Lunch Act that describes how funds shall be apportioned among the states for an average reimbursement per lunch per child.

3.99. "Senior high school student" means:

3.99.1. any student enrolled in a 3 year high school (grades 10-12), or

3.99.2. any student enrolled in a 4 year high school (grades 9-12), or

3.99.3. any student in a 5 or 6 year secondary school that is enrolled in

either:

a. grades 10-12 or

b. grades 9-12.

3.99.4. as determined by the local School Food Authority.

3.100. "Serving period" is defined as the period of time that is normally required to serve a school breakfast or lunch. The serving period shall provide at least ten minutes of eating time after service of breakfast and twenty minutes of eating time after service of lunch.

3.101. "SFA (School Food Authority)" means the governing body that is responsible for the administration of one or more schools and has the legal authority to operate a breakfast or lunch program therein.

3.102. "SMP" means Special Milk Program.

3.103. "SOC" means State Optional Contract that makes specified products available to states for distribution to recipient agencies.

3.104. "Soft drinks" is defined as, for the purposes of this policy, "soft drinks" shall mean the same as "bottled soft drinks" as defined in Section 1, Article 19, Chapter 11 of the West Virginia Code.

3.105. "Special milk" is defined as milk sold to children at a reduced price or given free to eligible children. Schools participating in the federal food service program may not participate in the Special Milk Program. Schools may participate in the Special Milk Program for split-session kindergarten and/or other pre-primary programs where meal service is inaccessible to the children.

3.106. "Split session" is defined as an education program that operates for approximately one-half of the normal school day.

3.107. "Sponsor" is defined as the governing body responsible for the administration of one or more schools or residential child care centers.

3.108. "State agency" is defined as the State Educational Agency.

3.109. "State aid allotment" is defined as funds provided by the West Virginia Legislature to assist public schools in hiring local food service personnel. This is designated as the state funding needed to meet the state matching requirements set forth in the National School Lunch Act. The NSLA requires that ten percent of the three to one state matching requirements of the federal dollars, funding Section 4 of the Act, must be

in the form of state appropriations to local participating schools. These State Aid Allotments are paid to the county school systems in quarterly installments.

3.110. "State Educational Agency (as determined by the State Legislature)" is defined as the Superintendent of Schools or the State Board of Education controlling the WVDE.

3.111. "Straight line depreciation" is defined as a method of depreciating an item of equipment whereby an equal portion of the cost of the item is allocated to each period of use.

3.112. "Suspension" is defined as immediate exclusion from transactions involving federal nonprocurement programs pending completion of legal and/or debarment proceedings.

3.113. "TANF (Temporary Assistance for Needy Families)" is defined as any individual or group of individuals currently certified to receive assistance under the program in a state where the standard of eligibility for benefits does not exceed the income eligibility guidelines for free meal or milk benefits.

3.114. "USDA" means United States Department of Agriculture

3.115. "USDE" means United States Department of Education.

3.116. "USRDA" means United States Recommended Daily Allowance - a list of nutrients reflected on food labels. The figures are not identical to the RDA.

3.117. "Verification" is defined as confirmation of eligibility for free/reduced price benefits under the National School Lunch Program.

3.118. "Waiver" is defined as an individual school's request for granting of a waiver for the service of school breakfast due to compelling circumstances.

3.119. "Whole grain" is defined as products that contain the entire grain, or all the grain that is edible. They include the bran and germ portions that contain most of the fiber, vitamins and minerals, as well as the starchy endosperm. Examples of whole grains may include whole wheat, cracked wheat, bulgur, oatmeal and whole cornmeal.

3.120. "West Virginia Child Nutrition State Plan" is defined as an annual statement of program objectives and a plan to implement national policy.

3.121. "WVDE" means West Virginia Department of Education.

**§126-85-4. Major Functions and Programs.**

4.1. Major functions are categorized in the areas of administration, technical assistance and training, monitoring and accountability, and outreach. Specifically, the Office of Child Nutrition works to achieve the following:

4.1.1. Ensure the service of nutritious meals that appeal to children.

4.1.2. Increase efficiency and accountability in food service operations.

4.1.3. Assist students in achieving optimum performance and quality of life.

4.1.4. Enable educators, food service personnel and parents to positively influence children's eating habits.

4.1.5. Collaborate with other governmental and community agencies in establishing goals and nutrition services for children.

4.1.6. Optimize the effectiveness of child nutrition personnel.

4.1.7. Promote and expand child nutrition programs.

4.2. Child Nutrition Programs are administered by the USDA, Division of Food, Nutrition and Consumer Service including the: NSLP, School Breakfast Program, Child and Adult Care Food Program, Summer Food Service for Children, Special Milk Program, Nutrition Education and Training, and Donated Foods Program.

4.3. These programs are authorized by the National School Lunch Act of 1946 and the Child Nutrition Act of 1966. All are administered by the WVDE, except the Donated Foods Program which is under the West Virginia Department of Health and Human Resources.

**§126-85-5. Responsibilities for Child Nutrition Programs.**

5.1. Federal level. At the federal level, the Food and Consumer Service shall act on behalf of the USDA in implementing the Child Nutrition Programs. It shall be responsible for the following four areas:

5.1.1. Program administration functions, including:

a. providing timely information to the Administration and to Congress;

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b. drafting, up-dating and publishing in the Federal Register regulations to implement the NSLA, Child Nutrition Act, as amended by Congress and the Healthy Meals for Healthy Americans Act of 1994;

c. soliciting public comment prior to issuing federal regulations in their final form;

d. conducting briefing sessions and/or public hearings concerning national policies related to school food service;

e. negotiating an annual written contract with each state educational agency for administration of the School Lunch, School Breakfast, Special Milk, Child and Adult Care Food Program, Summer Food Service Program;

f. developing and disseminating policy statements, instructions, time frames, guidelines and memoranda related to program management;

g. developing national policy concerning the provision of free and reduced price meals or free milk, including income poverty guidelines and prototype applications and administrative guidance;

h. annually reviewing and evaluating each state agency, together with selected sponsors and schools for each child nutrition program administered; initiating corrective action plans where necessary; and

i. reviewing and approving the various state plans as submitted by each state for the succeeding school years.

5.1.2. Financial management functions, including:

a. allocating federal funds by means of an annual Letter of Credit to each state agency agreeing to administer the various child nutrition programs;

b. developing prototype contracts, reporting forms, agreements, policy statements, financial management systems, application forms and review and evaluation forms for use in administration of the programs;

c. developing, where necessary, corrective action plans in cooperation with the state agency, including follow-up and financial assessment where necessary;

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- Congress;
- d. providing budgetary information to the Administration and to
- expenditures;
- e. revising proposed budgets in terms of authorized and budgeted
- program activity;
- f. collecting, processing and collating monthly participation reports;
- g. processing and up-dating each state's Letter of Credit to reflect
- and
- h. periodically up-dating reimbursement rates for various programs;
- i. reviewing and approving state automated data processing systems.

5.1.3. Training functions, including:

- a. preparing and distributing program aids;
- b. preparing and distributing suggested training materials for school food service personnel, nutrition education and parental involvement;
- c. developing criteria to measure the nutritional quality of foods and beverages to be served in schools;
- d. cooperating with community groups, professional associations and allied agencies to evaluate program effectiveness; and
- e. negotiating contracts with appropriate agencies to conduct surveys, evaluations, and special research projects.

5.1.4. Food distribution functions, including:

- a. negotiating an annual agreement with each state for the acceptance, allocation and delivery of government-donated foods;
- b. developing specifications and issuing bids for the purchase of foods to be distributed to child nutrition programs;
- c. allocating and shipping government-donated foods to each state;

- d. monitoring the state's government-donated foods distribution plan;
- and
- e. approving Commodity Processing contracts and/or implementing the National Inventory System.

5.2. State level. The WVDE is responsible for the following four areas:

5.2.1. Program administration functions, including:

- a. preparing annual state plans for Child Nutrition Program operations and a State Plan for the Nutrition Education and Training Program;
- b. annually negotiating a Sponsors Agreement or Amendment thereto with sponsoring agencies;
- c. developing prototype Policy Statements for provision of free and reduced price meals, free milk, free textbooks, workbooks and instructional supplies and other specified educational benefits;
- d. approving Policy Statements submitted annually for all school programs administered by each sponsoring agency;
- e. developing, printing and distributing prototype student applications and letters to parents concerning the availability of free and reduced price meals and distributing information needed for benefit issuance under direct certification;
- f. preparing annual state and federal budget requests for the succeeding fiscal year (State-July 1 through June 30; Federal-October 1 through September 30);
- g. scheduling, conducting, summarizing and evaluating public hearings on the various child nutrition programs;
- h. continuously reviewing and evaluating USDA regulations and instructions as published in the Federal Register (proposed, interim and final regulations) or as issued by the USDA Regional Office (guides, handbooks, instructions, memoranda and reports);
- i. notifying sponsoring agencies of USDA regulations, instructions and policy guidelines on a timely basis;

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j. cooperating with parents, students, community groups, professional associations, state and local agencies in outreach activities to extend program benefits and to create a positive image;

k. establishing, organizing and convening the Nutrition Advisory Council and other advisory committees to maintain liaison with participating agencies; and

l. cooperating with national, state and local agencies in implementing an on-going nutrition education and training program that meets the identified needs of the state.

5.2.2. Financial management functions, including:

a. timely draw-down of federal funds to pay outstanding claims for reimbursement;

b. timely and accurate processing and paying of monthly claims for reimbursement;

c. preparing accurate monthly financial status reports and timely submission at state and federal levels;

d. annually reconciling reimbursement payments with program costs;

e. reconciling state and federal subsidiary accounts;

f. auditing sponsoring agencies and selected sites on an annual schedule in accordance with USDA Audit Guides; and

g. assessing sponsoring agencies for overclaims identified as part of the audit reports or CRE.

5.2.3. Monitoring and evaluation functions, including:

a. developing and monitoring the procedures to be used by schools in verifying information reported in a sampling of applications for free/reduced price meals;

b. annually reviewing net cash resources at the sponsor level;

c. conducting on-site reviews of program performance;

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d. monitoring sponsoring agencies and selected participating sites in accordance with regulations (CRE, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, State Standards for Educational Excellence, and WVBE Policy 4321.1, *Standards for School Nutrition*);

e. continuously evaluating program effectiveness;

f. assisting School Food Authorities, upon request, in implementing nutrient standard menu planning, and monitor meals for compliance with standards established by USDA regulations and WVBE Policy 4321.1, using nutrient analysis of meals.

5.2.4. Training and technical assistance functions, including:

a. scheduling and completing on-site visits to provide technical assistance and/or follow-up visits; providing technical assistance as a result of CRE reviews;

b. implementing staff development for local school food service personnel;

c. assisting sponsoring agencies with local school food service training programs where necessary;

d. developing and implementing on-going training programs for supervisory and administrative personnel (sponsor level);

e. reviewing and approving proposed plans and layouts for food service facilities when requested;

f. preparing and distributing training materials, program aids and guidance materials; and

g. provide training as needed to ensure that meals offered to children comply with nutrition standards established by USDA regulations and State Board Policy 4321.1.

5.3. Sponsor level. At the local level, each county board of education or sponsor is responsible for the following four areas:

5.3.1. Program administration functions, including:

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- a. annually negotiating contracts with participating schools;
- b. presenting for approval to the local board of education the Sponsors Agreement and Policy Statement for provision of free and reduced price meals or free milk, free textbooks, workbooks and instructional supplies; providing copies of sponsor's approved Policy Statement to all participating schools;
- c. distributing copies of Application for Free or Reduced Price Meals and Free Textbooks, Workbooks and Instructional Materials;
- d. implementing required hearing procedures;
- e. implementing a county level verification procedure to be used in the approval of applications for free and reduced price meals;
- f. monitoring school procedures in handling applications for free and reduced price meals, collection procedures for meal payment, point of service count, edit checks of meal counts and avoidance of overt identification of needy children;
- g. developing standard policies regarding employment practices, grievance procedures, supervision and training of food service personnel;
- h. organizing, when needed for compliance with 7 CFR 210 and Policy §4321.1, *Standards for School Nutrition*, school and county advisory councils;
- i. assisting student-parent planning committees to improve public relations and increase student participation;
- j. notifying school administrators and school food service personnel concerning rules, regulations and policies governing school food service programs;
- k. maintaining liaison with parent, student and community groups;
- l. promoting National School Lunch Week and other special activities;
- m. extending and expanding program benefits to meet the nutritional, emotional and social needs of all children;
- n. school automating records and reports; and
- o. reporting names and site addresses for vended and satellited meals.

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5.3.2. Financial management functions, including:

a. verifying and consolidating schools' monthly reports of participation and claims for reimbursement; promptly submitting the sponsor's consolidated Claim for Reimbursement; verifying sponsor's monthly reimbursement payments and allocating payments to the individual schools or programs;

b. consolidating schools' financial reports each month; preparing an annual sponsor's report of accrued income and per meal costs; submitting report to state agency; documenting reported income and expenditures and retaining documentation for three years plus current operating year;

c. annually reviewing operating balances at the school level; annually reconciling reimbursement payments to direct costs incurred at the school or sponsor level; assigning and adjusting school reimbursement rates (in relation to allowable per meal costs);

d. developing, implementing and maintaining an inventory control system for food service equipment (retention for 12 years);

e. establishing and implementing purchasing procedures in compliance with state and federal regulations;

f. developing and implementing a viable financial management system and an automated data processing plan that meets state and federal requirements;

g. reviewing edit checks monthly and document reasons for unusually high percentage of participation; and

h. obtaining attendance factor for each school.

5.3.3. Monitoring and evaluation functions, including:

a. maintaining a regular schedule of on-site visits to participating schools; monitoring all food service sites prior to February 1 of each school year and scheduling follow-up visits to schools to ensure program compliance; accompanying state and/or federal representatives on local school visits; and

b. continuously evaluating the effectiveness of the child nutrition programs in serving all children.

5.3.4. Training and technical assistance functions, including:

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a. reviewing and approving building and renovation lay-outs, plans and purchasing contracts; reviewing and approving major food service equipment purchases;

b. planning and/or approving school food service menus prior to time of service; developing and implementing local policies concerning the serving of nutritious foods at schools;

c. complying with state and local standards concerning sales of foods and beverages during the school day;

d. providing technical assistance to school food service personnel, school administrators and clerical personnel;

e. developing and implementing an on-going training program for food service personnel, school clerical personnel and school administrators;

f. providing resource person(s) for school administrators, teachers, professional groups and allied agencies;

g. assisting teachers and school administrators in developing an on-going nutrition education program;

h. developing and/or disseminating training aids, instructional materials, handbooks, manuals and other program aids; and

i. initiating an on-going, relevant professional growth program for food service supervisory personnel.

5.4. School level. The local school administrator is responsible for the following five areas:

5.4.1. Program operation functions, including:

a. filing an Application for School Lunch, School Breakfast and Special Milk Programs with the county boards of education;

b. distributing, at the beginning of each school year Applications for Free and Reduced Price Meals and Free Textbooks, Workbooks and Educational Materials to each student enrolled in the school and/or determining eligibility of students based upon direct certification;

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c. reviewing and approving, in accordance with state and county administrative guidance materials, each application for free meals and reduced price meals and/or complete direct certification for eligibility;

d. verifying information reported on a sampling of applications for free and reduced price meals and verifying any incomplete, illegible or questionable information entered on the applications;

e. approving all eligible, complete applications and denying all applications that do not meet the eligibility guidelines. Such approval or denial must be entered on the application in the appropriate areas and parents must be notified within 10 working days after the completed application has been returned to the school;

f. informing all teachers and clerical personnel of the federal, state and county requirements for provision of free and reduced price meals or free milk;

g. initiating hearing procedures when information entered on the application is challenged, or appears to be inaccurate;

h. providing copies of student applications for free and reduced price meal benefits when an eligible student transfers to another school;

i. checking menus prior to and during service to ensure that all nutritional requirements are met;

j. providing assistance to school food service personnel in planning menus that provide for choices within the required meal components to all students; and

k. providing alternate meal services (plate lunch and box lunch; salad plate and regular plate lunch; continental breakfast and regular breakfast) to increase student participation.

5.4.2. Records and reports functions, including:

a. establishing a procedure for obtaining accurate meal counts at the serving line without overt identification so that accurate reports of daily student participation by category are entered on the daily reporting form;

b. maintaining all records pertaining to child nutrition programs (including applications for free and reduced price meals, participation records, invoices, financial reports, equipment inventories and production records) for three years plus the current school year;

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- c. submitting complete and accurate reports of daily participation; and
- d. submitting a monthly report of food service revenue and expenditures to the county office.

5.4.3. Financial management functions, including:

- a. developing and implementing standard procedures for collecting meal payments, collecting meal tickets and serving meals so that no student is overtly identified;
- b. establishing a system for payment and reporting of all food service invoices in compliance with county and state requirements for financial management;
- c. obtaining prior approval for all major purchases from the sponsoring agency;
- d. establishing standard procedures for maintaining inventories of purchased and government-donated foods, supplies and equipment; and
- e. documenting reported expenditures.

5.4.4. Training functions, including:

- a. encouraging school food service and clerical personnel to participate in the county's staff development program;
- b. remaining informed concerning federal, state and county regulations and policies concerning the various child nutrition programs; and
- c. encouraging teachers to attend available nutrition education training and assisting teachers in developing a sequential nutrition education program in the classroom.

5.4.5. Public relations functions, including:

- a. advising parents concerning the types of food service programs available at the school and surveying the need for additional programs;
- b. organizing student advisory councils to assist in menu planning, publicity and observance of special days in the lunchroom; and

c. maintaining liaison with parents, students, community groups and the administration to promote good public relations.

**§126-85-6. Due Dates for Reports.**

6.1. Deadlines for submission of reports and documents are as follows:

6.1.1. September 1. Policy Statement (WVDE 43-10-11), Annual School Information for the School Lunch, School Breakfast and Special Milk Program, and Criteria for Determination of Severe Need Schools School Breakfast Program.

6.1.2. 10th of Each Month. Monthly Claim for Reimbursement (WVDE 43-10-30) (tenth of the month following the monthly period being claimed).

6.1.3. October 15. Monthly Financial Reports (WVDE 43-10-31).

6.1.4. January 15. Monthly Financial Reports (WVDE 43-10-31).

6.1.5. April 15. Monthly Financial Reports (WVDE 43-10-31).

6.1.6. July 15. Monthly Financial Reports (WVDE 43-10-31).

6.1.7. September 30. Annual Report (WVDE 43-10-32).

6.1.8. October 31. Verification. Draw sample based on the number of free/reduced price meal applications on file October 31.

6.1.9. October 31. Civil Rights Information (racial, ethnic data).

6.1.10. November 30. Notify WVDE of Verification Extension.

6.1.11. December 15. Complete verification process.

6.1.12. January 10. SFA Verification Summary Report received by the WVDE, Office of Child Nutrition.

6.1.13. February 1. Complete SFA site monitoring.

**§126-85-7. School Breakfast.**

7.1. ". . . Each county board of education shall establish and operate a school breakfast program under which a nutritious breakfast shall be made available to all pupils enrolled in the schools of the county in accord with standards of the state department of education " (W.Va. Code §18-5-37).

7.2. The school breakfast is a meal that meets federal and state nutritional requirements and is served to students at or near the beginning of the school day. Schools may serve breakfast for an extended period of time or at different times during the morning hours. In secondary schools with continuous or multi-session service the serving/eating time can be reduced by serving prepackaged or portioned menu items. The "offer versus serve" option applies to school breakfasts.

**§126-85-8. School Breakfast Program Meal Requirements and Recommendations.**

8.1. The USDA Breakfast requirements are designed to provide a simple framework for planning nutritious breakfasts. They also provide for menu flexibility that can include student preferences or special food needs at the local level.

FOOD COMPONENTS/ITEMS	AGES 1 AND 2	AGES 3, 4, & 5	GRADES K-12
<u>MILK</u> (Fluid) (As a beverage, on cereal, or both)	1/2 cup	3/4 cup	1/2 pint
<u>JUICE/FRUIT/VEGETABLE*</u> Fruit and/or vegetable: or full-strength Fruit Juice or Vegetable Juice	1/4 cup	1/2 cup	1/2 cup
Select <u>one</u> serving from each of the following components/items or <u>two</u> servings from one component/item			
<u>BREAD/BREAD ALTERNATES**</u> One of the following or an equivalent combination: <ul style="list-style-type: none"> <li>● Bread (whole-grain or enriched)</li> <li>● Biscuit, roll, muffin or equal serving of cornbread, etc. (whole-grain or enriched meal or flour)</li> <li>● Cereal (whole-grain or enriched or fortified)</li> </ul>	1/2 slice  1/2 serving 1/4 cup or 1/3 ounce	1/2 slice  1/2 serving 1/3 cup or 1/2 ounce	1 slice  1 serving 3/4 cup or 1 ounce
<u>MEAT/MEAT ALTERNATES</u> One of the following or an equivalent combination: <ul style="list-style-type: none"> <li>● Lean meat, poultry, or fish</li> <li>● Cheese</li> <li>● Large Egg</li> <li>● Peanut Butter or other nut or seed butters</li> <li>● Cooked dry beans and peas</li> <li>● Nuts and/or Seeds (as listed in program guidance)***</li> <li>● Yogurt, plain or flavored, unsweetened, sweetened</li> </ul>	1/2 ounce 1/2 ounce 1/2  1 Tbsp 2 Tbsp  1/2 ounce 6 oz. or 3/4 cup	1/2 ounce 1/2 ounce 1/2  1 Tbsp 2 Tbsp  1/2 ounce 8 oz. or 1 cup	1/2 ounce 1 ounce 1/2  1 Tbsp 4 Tbsp  1 ounce 12 oz. or 1 1/2 cup
<p>*Recommended daily: A citrus juice or fruit or a fruit or vegetable that is a good source of vitamin C (See Menu Planning Guide for School Food Service, PA-1260).</p> <p>**For serving sizes of bread alternates, see Food Buying Guide for Child Nutrition Programs, PA-1331 (1984, Revised May 1990).</p> <p>***No more than one ounce of nuts and/or seeds may be served in any one meal.</p>			

8.2. Schools are encouraged to offer larger portions of food items to meet the needs of older students.

**§126-85-9. Sugar Content of Breakfast Items.**

9.1. All such menu items shall contain less than 40 percent sugar (in crystalline form or in solution as syrup, both monosaccharides and disaccharides) and/or other sweetening agents. Schools are encouraged to prepare appropriate school-baked items. It is the responsibility of the School Food Authority (SFA) or school to obtain sugar content statements that indicate percentage of total sweetening agents in questionable food and beverage items.

**§126-85-10. Offer Versus Serve Breakfast Pattern.**

10.1. "Offer versus serve" for breakfast requires that four food components/items be offered (made available), but allows students to choose three or four items. Milk and Fruit/Vegetable must comprise two components/items. The third and fourth food component/item requirements may be met by offering (a) two servings of bread or (b) two servings of meat or (c) one of each. The amount of each component/item served must be consistent with the minimum quantities specified in the Chart, School Breakfast Meal Pattern.

(a)

1 serving MILK	+	1 serving FRUIT/VEGETABLE	+	2 servings BREAD/BREAD ALTERNATE
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(b)

1 serving MILK	+	1 serving FRUIT/VEGETABLE	+	2 servings MEAT/MEAT ALTERNATE
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(c)

1 serving MILK	+	1 serving FRUIT/VEGETABLE	+	1 serving BREAD/BREAD ALTERNATE	+	1 serving MEAT/MEAT ALTERNATE
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10.1.1. West Virginia Board of Education (WVBE) Policy 4321.1, *Standards for School Nutrition* recommends low-fat milk choices and whole grain bread/bread alternates. A serving of low-fat, low-salt meat/meat alternate choice is also recommended daily.

10.1.2. "Offer vs. serve", is intended to reduce plate waste; therefore, students may refuse one food item from the required components/items. A student's decision to decline a food item shall not affect the charge for breakfast.

10.1.3. The school food authority has the option of implementing "offer vs. serve" for breakfast, either on a school by school or county basis. In schools not implementing "offer vs. serve", a student must take full portions of all four food items offered for breakfast.

### **§126-85-11. Breakfast A La Carte.**

11.1. To encourage students to develop good eating habits and to provide for the nutritional needs of all students in attendance, sales of certain items of food may be made in the dining area at the same time as the breakfast service. With the approval of the School Food Authority (SFA), schools are authorized to sell, as separately priced menu items, the specific food and beverage items listed below:

11.1.1. full strength (100%) fruit or vegetable juice;

11.1.2. fresh fruit, such as apples or bananas;

11.1.3. milk;

11.1.4. bread items prepared from whole-grain or enriched flour, including toast, biscuits, muffins, English muffins, quick breads, bagels, rolls, or whole-grain enriched or fortified cereal; and/or

11.1.5. meat/meat alternates such as lean meat, poultry, fish, cheese, yogurt, egg, peanut butter or other nut or seed butters, cooked dry beans or dried peas. No more than one ounce of nuts and/or seeds may be served in any one meal.

11.2. The funds received from the sale of all a la carte breakfast foods and beverages shall accrue to the school's child nutrition account.

### **§126-85-12. Dietary Exceptions.**

12.1. USDA regulations 7 CFR-220.8(f) require that schools shall make substitutions in foods for students with a disability. A child with a disability, as defined in 7 CFR Part 15b, is "one who has "...a physical or mental impairment which substantially limits one or more major life activities..." Major life activities include the diet. Schools may

make substitutions for students with special needs who are unable to consume the regular breakfast because of medical or other special dietary needs.

12.2. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for substitutions that include recommended alternate foods unless otherwise exempted by Food and Nutrition Service (FNS). Such statements shall, in the case of a student with a disability, be signed by a physician or, in the case of a student with special needs, by a recognized medical authority. The statement must be maintained on file in the school and available for audit. Proto-type letters that may serve for these medical statements are available from the Office of Child Nutrition.

12.3. Regulations allow for certain other variations in the food components of the basic meal requirements on an experimental or continuing basis in schools where there is specific evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic or physical needs. However, these exceptions must be granted by the Food and Nutrition Service, USDA, Washington, D.C.

12.4. Any deviation from the required meal pattern other than those described above must be approved in writing by the WVDE or a WVDE Coordinator.

**§126-85-13. Reimbursable Breakfasts.**

13.1. In order for a breakfast to be considered a reimbursable meal, 1) the four required food items must be offered to all students and 2) the serving sizes offered must be consistent with the minimum quantities. Additionally, students must select a minimum of three of four items, if "offer vs. serve" is practiced or all four if "offer vs. serve" is not practiced.

13.2. Reimbursement for only one breakfast per day may be claimed for a student who is:

13.2.1. enrolled in the educational program of the School Food Authority (SFA);

13.2.2. in attendance at the time of meal service; and

13.2.3. claimed by eligibility category established by currently approved free or reduced meal application.

13.3. Second breakfasts consumed by students must be converted to non-reimbursable lunches using the formula, one breakfast equals three-fourths of a lunch. At

the end of each month, multiply the total number of second breakfasts served by .75 and record this figure in column 11 on Form WVDE 43-10-30S.

13.4. Returned unopened milk, juice, or other foods served to children may not be served as a part of another reimbursable meal.

**§126-85-14. Severe Need Rates of Reimbursement.**

14.1. A school will be eligible for severe need reimbursement rates for school breakfast only if the school served 40 percent or more of its lunches free or at a reduced price during the second preceding year.

14.2. Any eligible school must annually complete and submit an application for severe need breakfast classification to the Office of Child Nutrition of the WVDE for approval.

14.3. USDA regulations require that schools receiving the severe need rate for breakfast reimbursement must document SFA costs that equal or exceed the total breakfast reimbursement or repayment of severe needs monies not utilized must be made.

**§126-85-15. Production Records.**

15.1. Completion of production records for breakfast is required in child nutrition programs in West Virginia. Booklets containing these record sheets will be furnished by the WVDE and, after completion, will be kept on file in the school with child nutrition records for three years plus the current year.

15.2. A production record documents the menu and the quantities of foods served. Therefore, it is an excellent management tool. A production record should contain the following basic information:

15.2.1. menu;

15.2.2. serving size planned;

15.2.3. quantity/number of food/food items prepared;

15.2.4. number and size container (#10 can, pounds, count, etc.);

15.2.5. quantity of food left over;

15.2.6. disposal of leftovers;

15.2.7. number students not yet served when food supply ran out;

15.2.8. number of meals served by category (children and adults);

15.2.9. date and day of the week; and

15.2.10. name of person completing report.

15.3. When production records are used to full advantage in child nutrition programs, food production costs and food waste are kept to a minimum. Advantages of using production records in specific school programs are:

15.3.1. in single choice situations, production records help forecast the amount of food to prepare; and

15.3.2. when choices of menus or menu items are offered, production records help forecast the number of servings to prepare for each menu item thus reducing the possibility of running out of a choice.

#### **§126-85-16. Bus Schedule.**

16.1. The school and transportation schedules must provide time for school breakfast prior to the start of the student's instructional day.

16.2. A minimum of ten minutes eating time (after going through the serving line) is to be provided for students eating school breakfast.

#### **§126-85-17. Waiver.**

17.1. "A particular school, which because of compelling circumstances is not able to provide a satisfactory school breakfast program may apply to the state superintendent of schools for a waiver. Upon application, the state superintendent of schools shall give notice and the opportunity to be heard to the parents and the school and shall review the specific reasons for the waiver request and if the state superintendent determines that a particular school, because of compelling circumstances, is not able to provide a satisfactory school breakfast program, it may be granted a waiver, not to exceed two years except upon reapplication" (W.Va. Code §18-5-37).

17.2. If, after review of the request, the county superintendent concurs that the school has compelling circumstances that prevent the operation of the school breakfast program, the request for the waiver shall be approved by the county superintendent.

17.3. Each request for a waiver due to compelling circumstances shall be submitted in writing by the county superintendent and the county board to the state superintendent of schools. The request shall set forth the circumstances leading to the waiver request and shall be accompanied by appropriate documentation, together with a proposed date and location for the required hearing.

17.4. Each request for a waiver shall be reviewed by the WVDE. Public announcement of the dates and places for the hearings shall be made by the state superintendent of schools. The required hearing shall be conducted by local school officials. Roll call and minutes of the proceedings shall be taken and a summary of the minutes shall be transmitted to the WVDE.

17.5. The State Superintendent of Schools shall notify the county superintendent of schools in writing concerning the approval or denial of the waiver request. Notification shall be given within 15 working days after the receipt of the record of the public hearing. The notification shall state whether the duration of the waiver approval is for one or two years.

17.6. The State Superintendent shall annually report to the West Virginia Legislature on the first day of the regular session the schools exempt for that school term under the waiver provision and shall state the reasons for such exemptions.

#### **§126-85-18. Termination Provision.**

18.1. If at any time, all USDA appropriations to the WVDE for the school breakfast program are terminated, SFAs are authorized but not required to continue the operation of the school breakfast program.

#### **§126-85-19. School Lunch.**

19.1. The nutritional goal for school lunches is to provide approximately one-third of the RDA as specified by the National Research Council/National Academy of Sciences. It is expected that each lunch each day will provide one-third of the RDA for calories but not necessarily for all nutrients. However, when averaged over a period of time it is expected that the RDAs will be met.

19.2. In developing the USDA meal requirements, amounts of food energy (calories) and nutrients for adequate food composition data were considered. Additionally, since the meal requirements allow for a variety of foods, it is assumed that other nutrients for which no RDA have been established or for which inadequate food composition data are available will also be supplied.

**§126-85-20. Meal Requirements and Recommendations.**

20.1. The USDA lunch requirements are designed to provide a simple and easy-to-follow framework for planning nutritious and well-balanced lunches. They provide for broad food choices that can include local food preferences, cultural, ethnic and religious food practices.

20.2. The USDA meal requirements are specific to the kinds and amounts of food for each of the four food components. However, a minimum of five food items must be served, as shown below:

20.2.1. Components:

- a. Meat/Meat Alternate
- b. Vegetable/Fruit
- c. Bread/Bread Alternate
- d. Milk

20.2.2. Food Items:

- a. Meat/Meat Alternate
- b. Vegetable/Fruit
- c. Vegetable/Fruit
- d. Bread/Bread Alternate
- e. Milk

20.3. Other foods may be added as needed to complete the lunch and will provide additional food energy (calories) and other nutrients. These foods are served in addition to foods that meet the component requirements of a reimbursable lunch. They do not contribute to the USDA meal pattern requirements.

20.4. Additional menu items should always contain less than 40 percent sugar (in crystalline form or in solution as syrup, both monosaccharides and disaccharides) and/or other sweetening agents.

20.5. Schools are encouraged to serve school-baked items from recipes using limited amounts of sugar. It is the responsibility of the SFA or school to obtain sugar content statements that indicate percentage of total sweetening agents in questionable food and beverage items.

20.6. In addition to the USDA requirements and recommendations, the WVBE has adopted school meal standards that implement the concepts of the Dietary Guidelines for Americans. Policy 4321.1, *Standards for School Nutrition* specifies nutrient and food standards. SFAs must select and plan menus according to either Option A (nutrient analysis) or Option B (modified meal pattern) or an approved USDA meal pattern.

20.7. The policy also addresses the nutrient needs of the pregnant and lactating student by requiring additional foods be provided to said students so that breakfast and lunch together or in combination with a snack, provide:

20.7.1. a total of 5 oz. of protein foods, 1 oz. of which shall be 1 oz. cheese, 1 cup yogurt or 8 oz. fluid milk;

20.7.2. 3 servings from the grain group, preferably from whole grains;

20.7.3. 1-1/4 cups from the fruit and vegetable group;

20.7.4. 16 oz. from milk group; and

20.7.5. in these additional foods, the following option shall be allowed, 1 cup of fruit in place of one serving of the grain group once a week.

**§126-85-21. Food Quantities.**

21.1. A school lunch must contain quantities of each of the food components, as specified by the National School Lunch Program regulations. The following chart specifies USDA quantities by age/grade group, modified to reflect West Virginia standards.

WEST VIRGINIA MODIFIED MEAL PATTERN		MINIMUM QUANTITIES					RECOMMENDED QUANTITIES
		PRESCHOOL Ages 1-2 (Group I)	PRESCHOOL Ages 3-4 (Group II)	GRADES K-3 Ages 5-8 (Group III)	GRADES 4-12 Age 9 & over (Group IV)	GRADES 7-12 age 12 & over (Group V)	
MEAT OR MEAT ALTERNATE	A serving of one of the following or a combination to give an equivalent quantity:						
emphasize lean and lower sodium choices	Lean meat, poultry, or fish (edible portion as served)	1 oz	1 1/2 oz	1 1/2 oz	2 oz	3 oz	
*serve dried beans, dried peas/lentils once a week	Cheese	1 oz	1 1/2 oz	1 1/2 oz	2 oz	3 oz	
	Large egg(s)	1/2	3/4	3/4	1	1 1/2	
	Peanut butter	2 Tbsp	3 Tbsp	3 Tbsp	4 Tbsp	6 Tbsp	
	Nuts or seeds	1/2 oz = 50%	3/4 oz = 50%	3/4 oz = 50%	1 oz = 50%	1 1/2 oz = 50%	
	Cooked dry beans or peas  *a minimum of 1/2 cup serving/week must be cooked dried beans/dried peas or lentils	1/4 cup	3/8 cup	3/8 cup	1/2 cup	3/4 cup	
	Yogurt, plain or flavored, unsweetened, sweetened	4 oz or 1/2 cup	6 oz. or 3/4 cup	6 oz. or 3/4 cup	8 oz. or 1 cup	12 oz. or 1 1/2 cup	
VEGETABLE AND/OR FRUIT	Must serve at least two different foods	1/2 cup	1/2 cup	1 cup	1 1/4 cups	1 1/4 cups	
*offer fresh produce whenever possible				*at least 1/4 cup fresh 5 times per week	at least 1/4 cup fresh 5 times per week	at least 1/4 cup fresh 5 times per week	
BREAD OR BREAD ALTERNATE	Servings of bread or bread alternate.  A serving is <ul style="list-style-type: none"> <li>● 1 slice of whole-grain or enriched bread</li> <li>● A whole-grain or enriched biscuit, roll, muffin, etc.</li> <li>● 1/2 cup of cooked whole-grain or enriched rice, macaroni, noodles, whole-grains such as bulgur or corn grits</li> <li>● A combination of any of the above</li> </ul>	5 per week	8 per week	10 per week 1 1/2 a day	12 per week 1 1/2 a day	12 per week 1 1/2 a day	
*emphasize whole grain products				*a minimum of 5 servings a week must contain at least 33% whole grain	a minimum of 5 servings a week must contain at least 33% whole grain	a minimum of 5 servings a week must contain at least 33% whole grain	
MILK	A serving of fluid milk	3/4 cup (6 fl oz)	3/4 cup (6 fl oz)	1/2 pint (8 fl oz)	1/2 pint (8 fl oz)	1/2 pint (8 fl oz)	
offer low fat choices							
WATER	Encourage adequate water consumption	Offer water	Offer water	Offer water	Offer water	Offer water	

21.1.1. Note that Groups I through IV are minimum requirements, but the quantities specified in Group V are recommendations. Schools are encouraged, not required, to vary portion sizes to better meet the food and nutritional needs of students by age. If a school chooses not to vary portion sizes, it is important to ensure that the oldest group of students being served is receiving the minimum requirements for that age group. For any age group of students, more but not less than the minimum quantity may be served.

21.1.2. The quantities specified in Group V for students age 12 and over are recommendations, not requirements, and the minimum requirements for that group are the quantities specified in Group IV for students age 9 and over.

**§126-85-22. Meat/Meat Alternate Component.**

22.1. West Virginia Modified Meal Pattern (Option B).

Minimum Quantities for students, grades K-12:			
One of the following or a combination to give an equivalent quantity:	Grades K-3 ages 5-8 (Group III)	Grades 4-12 age 9 and over (Group IV)	Grades 7-12 age 12 and over (Group V)
Lean meat, poultry, or fish	1 1/2 oz.	2 oz.	3 oz.
Cheese	1 1/2 oz.	2 oz.	3 oz.
Large eggs	3/4	1	1 1/2
Peanut butter or soynut butter or other nut or seed butters	3 Tbsp.	4 Tbsp.	6 Tbsp.
Peanuts or soynuts or tree nuts or seeds	3/4 oz. = 50%	1 oz. = 50%	1 1/2 oz. = 50%
Cooked dry beans or peas*	3/8 cup	1/2 cup	3/4 cup
Yogurt, plain or flavored, unsweetened, sweetened	6 oz. or 3/4 cup	8 oz. or 1 cup	12 oz. or 1 1/2 cup
*West Virginia modified meal pattern (Option B) emphasizes low-fat, low sodium, high fiber foods by requiring that dried beans, dried peas or lentils be served as a meat/meat alternate at least once a week.			

22.1.1. The meat/meat alternate must be served in the main dish or the main dish and one other menu item. This means that two menu items are the maximum number that may be used to meet the meat/meat alternate requirement.

22.1.2. Textured vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein may be used to meet part of the meat/meat alternate requirement. Fact sheets on each of these alternate foods give detailed instructions for use.

22.1.3. No more than 50% of the meat/meat alternate requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement.

22.1.4. If the required serving for a meat alternate seems too large for a particular age group being served, a smaller portion should be served to meet part of the requirement while combined with another meat or meat alternate to meet the full requirement.

22.1.5. It is recommended that schools offer students a choice of meat/meat alternate each day or that a particular meat alternate or form of meat (ground, diced, pieces, etc.) not be served more than three times in a single week.

22.1.6. Further information on the meat/meat alternate component is found in the USDA Menu Planning Guide, pages 12-14.

**§126-85-23. Vegetable/Fruit Component.**

23.1. West Virginia Modified Meal Pattern (Option B).

Minimum quantities for students, grades K-12:		
	Grades K-3 ages 5-8 (Group III)	Grades 4-12 age 9 and over (Group IV)
Two or more servings of vegetables or fruits or both to total	1 cup	1 1/4 cups
West Virginia modified meal pattern (Option B) and nutrient standard (Option A) requires that fresh fruits and vegetables be offered in quantities of at least 1/4 cup 5 times per week.		

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23.1.1. The required servings must consist of two or more fruits or vegetables. Menu items such as fruit cocktail and mixed vegetables are counted as one item. Chef's salad or a fruit plate with cottage cheese are considered as two or more servings and will meet the full requirement if being served as the entrée.

23.1.2. In order for juice to meet the fruit/vegetable requirement, at least 100% full strength juice must be used to equal only one-half the requirement or 3/8 cup. If 50% juice is used, the amount must be doubled (one cup) to equal the 3/8 cup.

23.1.3. Cooked dry beans or peas may be used to meet the meat/meat alternate requirement or the vegetable/fruit requirement, but not both in the same meal.

23.1.4. Include a vegetable or fruit rich in vitamin A at least twice a week and a vegetable or fruit rich in vitamin C at least two or three times a week. Refer to the USDA Menu Planning Guide for suggestions.

**§126-85-24. Bread/Bread Alternate Component.**

24.1. West Virginia Modified Meal Pattern (Option B).

	Grades K-3 ages 5-8 (Group III)	Grades 4-12 age 9 and over (Group IV)	Grades 7-12 age 12 and over (Group V)
Servings of bread or bread alternate	1.5/day or 10/week	1.5/day or 12/week	1.5/day or 12/week
Offerings should include at least 5 servings a week that contain 33% whole grains.			
A serving is:			
<ul style="list-style-type: none"> <li>● one slice of whole-grain or enriched bread;</li> <li>● a biscuit, roll, muffin, etc., whole-grain or enriched;</li> <li>● 1/2 cup of cooked whole-grain or enriched rice;</li> <li>● 1/2 cup of macaroni, noodles, other whole-grain or enriched pasta products, or other cereal grains such as bulgur or corn grits; or</li> <li>● a combination of any of the above.</li> </ul>			

24.1.1. Only bread/bread alternates that are served as an accompaniment to the main dish may be used to meet the bread requirement. Dessert and snack-type foods, such as cakes, cookies, dessert pie crust, hard thin pretzels and corn chips may not be counted to meet the bread requirement because they do not accompany any known

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main dish; except that, when 12 servings of grains/breads are served per week a total of two of the grain/breads servings, but not more than one per day, may be grain-based desserts.

24.1.2. Enriched macaroni products with fortified protein may be used to meet a part of the meat/meat alternate requirement or to meet the bread/bread alternate requirement, but not both in the same meal.

24.1.3. Whole grain refers to products that contain the entire grain, or all the grain that is edible. They include the bran and germ portions that contain most of the fiber, vitamins and minerals, as well as the starchy endosperm. Examples of whole grains may include whole wheat, cracked wheat, bulgur, oatmeal, and whole cornmeal.

24.1.4. Refer to the USDA Food Buying Guide for Child Nutrition Programs (1990), Bread and Bread Alternates Section, for weights of servings and a detailed list of breads and bread alternates.

**§126-85-25. Milk Component.**

25.1. West Virginia Modified Meal Pattern (Option B).

Minimum quantities for students, grades K-12:			
	Grades K-3 ages 5-8 (Group III)	Grades 4-12 age 9 and over (Group IV)	Grades 7-12 age 12 and over (Group V)
Fluid Milk	1/2 pint (8 fl. oz.)	1/2 pint (8 fl. oz.)	1/2 pint (8 fl. oz.)
Both whole milk and unflavored lowfat milk are required*. The whole milk may be flavored or unflavored. The unflavored fluid lowfat milk may be 2% or less butterfat, skim milk or buttermilk. Skim milk cannot be the only source of lowfat milk available.			

25.1.1. This requirement does not prohibit offering other milks, such as whole flavored milk or flavored lowfat milk, along with two or more of the above.

25.1.2. \*In the event that a particular type of milk represents less than one percent of the total amount of milk consumed in the previous year, schools may elect not

to make this type of milk available. Documentation such as purchase orders and inventory records are required to substantiate such action and should be kept on file at the school or SFA.

25.1.3. Milk must be offered as a beverage for lunch.

25.1.4. Milkshakes containing 1/2 pint of fluid milk meeting state or local standards for fluid milk may be served as a choice to meet the milk requirement.

25.1.5. Further information on the milk component is found in the USDA Menu Planning Guide, page 18.

**§126-85-26. Product Analysis Sheets and Child Nutrition Labels.**

26.1. When commercially prepared food items, especially breaded, frozen, protein items, are purchased for use in the school lunch program, a product analysis sheet or CN label must be on file in the school kitchen. For example, in the case of pizza, the product analysis sheet should specify the exact amount of meat and cheese per portion. A CN label on commercially prepared individual portions clearly identifies the contribution of a product toward the meal pattern requirement. If this information is not available, the prepared item may not be counted to meet the component requirements since the item's contribution to the meal pattern is unknown.

26.2. A CN label will always contain the following:

26.2.1. The CN logo which is a distinct border.

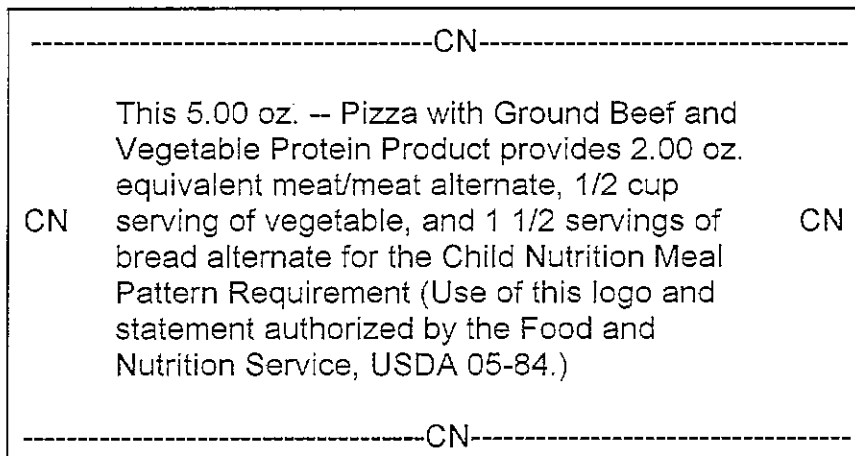
26.2.2. The meal pattern contribution statement.

26.2.3. A 6-digit product identification number.

26.2.4. USDA/Food and Consumer Service (FCS) authorization.

26.2.5. The month and year of approval.

## 26.2.6. Sample Label Statement.

**§126-85-27. Offer Versus Serve for Lunch.**

27.1. "Offer vs. serve" is a serving method designed to reduce food waste and food costs in the National School Lunch Program without jeopardizing the nutritional integrity of the lunches served. It allows senior high school students and, when approved by the local SFA, students in other grades to decline food they do not intend to eat. For definition of "Offer vs. serve", see 3.73. of this policy.

27.2. Senior high schools are required to implement the "offer vs serve" provision for their students. Senior high school students are students (1) of a high school grade level as determined by state and local educational agencies and (2) enrolled in a senior high school that is recognized as a part of the education system within a state.

27.3. The implementation of the "offer vs. serve" provision in junior high, middle and/or elementary schools is left to the discretion of local SFAs. In schools not implementing "offer vs. serve" a student must take the required five food items lunch in the full portion offered.

**§126-85-28. Kindergarten Snacks.**

28.1. Children of kindergarten age can only manage small quantities of food at one time. The recommendation is to offer lunch at two serving periods that meets the total minimum quantities. For example, at midmorning, juice and toast could be served. At lunch the meat, vegetable, milk and/or dessert would then be served or offered.

28.2. This method will provide a snack for children in this age group. If kindergarten children are served in two service periods, the total food served must meet minimum requirements.

28.3. State Board of Education Policy 4321.1, *Standards for School Nutrition*, allows the following as snack options for meals. Schools may choose to allow adequate time for consumption of increased volume of food by extending the meal period or by providing a snack under the following stipulations (Note: Prior USDA approval is required to provide the fruit/vegetable snack option for lunch.):

28.3.1. The snack is offered as a separate item at breakfast or lunch for consumption later.

28.3.2. The snack item may be a single serving of bread/bread alternate, fruit or vegetable.

28.3.3. If the snack option is chosen, school administrators and teachers should support this effort by providing students with the time and opportunity to eat these snacks during the day.

28.3.4. Timing of the snack is determined by individual schools choosing this option.

28.3.5. The price of the meals may not be increased solely as a result of choosing this option. (Note: No federal reimbursements exist for snacks outside the lunch or breakfast meals.)

28.3.6. Schools choosing this snack option may elect to sell the same snack foods to students who do not purchase a school meal.

#### **§126-85-29. A La Carte for Lunch.**

29.1. A la carte meal service for students and/or adults at lunch is prohibited. Meals must be priced and served as units. Food items (sandwiches, breads or any other menu item) may not be priced and sold separately. Only fluid milk, milk shakes and bottled water may be sold as a la carte for lunch.

29.2. Alternatives to a la carte are:

29.2.1. "Super Lunches", those providing larger portions and/or extra food items, may be offered to paying students at an additional cost. If such meals are offered, students who are eligible for free meals must be offered the same service as the paying

student at no cost and the students eligible for reduced price meals must be offered the same service at no additional cost.

29.2.2. Second meals can be sold and counted as non-reimbursable meals.

29.2.3. Second servings of individual food items may be provided.

### **§126-85-30. Dietary Exceptions.**

30.1. Regulations allow for certain variations in the food components of the basic meal requirements on an experimental or continuing basis in schools where there is specific evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic or physical needs. However, these exceptions must be granted by the Food and Consumer Service, USDA, Washington, D.C.

30.2. Any deviation from the required meal pattern other than those described above must be approved in writing by the WVDE or WVDE Coordinator.

30.3. USDA regulations (7 CFR-220.8(f) require that schools shall make substitutions in foods for students with a disability. A child with a disability, as defined in 7 CFR Part 15b, is one who has "...a physical or mental impairment which substantially limits one or more major life activities..." Major life activities include the diet. Schools may make substitutions for students with special needs who are unable to consume the regular lunch because of medical or other special dietary needs.

30.4. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods unless otherwise excepted by FCS. Such statements shall, in the case of a student with a disability, be signed by a physician or, in the case of a special needs student, by a recognized medical authority. The statement must be maintained on file in the school and available for audit. The statement needs to be updated each school year.

### **§126-85-31. Reimbursable Lunches.**

31.1. Lunches that meet USDA requirements are eligible for reimbursement. Only one lunch per day may be claimed for a student who is:

31.1.1. enrolled in the educational program of the SFA;

31.1.2. in attendance at the time of meal service; and

31.1.3. claimed by category established by currently approved free or reduced price meal applications.

31.2. Second lunches consumed by students should be listed as non-reimbursable lunches and recorded in column 11 on Form WVDE 43-10-30S.

**§126-85-32. Higher Reimbursement Rates.**

32.1. SFAs that served 60 percent or more free or reduced price meals during the second preceding year are entitled to a higher rate of reimbursement.

**§126-85-33. Production Records.**

33.1. Production records for lunch are required in every child nutrition program in West Virginia. Booklets containing these production sheets as well as salad bar production sheets will be furnished by the WVDE. After completion, they should be kept on file in the school's child nutrition department for three years plus the current year.

33.2. A production record documents the menu and the quantities of foods served. Therefore, it is an excellent management tool. Basic information for a production record should contain:

- 33.2.1. menu (recipe number if one is used, brand name of prepared entree);
- 33.2.2. serving size planned;
- 33.2.3. quantity/number of food/food items prepared;
- 33.2.4. number and size container (#10 can, pounds, count, etc.);
- 33.2.5. quantity of food left over;
- 33.2.6. disposal of leftovers;
- 33.2.7. number students not yet served when food supply ran out;
- 33.2.8. offer vs. serve;
- 33.2.9. date and day of the week;
- 33.2.10. number of meals served by category (children and adults);

33.2.11. milk served with meals; and

33.2.12. name of person completing report.

33.3. When production records are successfully used, production costs and food waste are kept to a minimum. Advantages of production records in specific school programs are:

33.3.1. in single choice situations, production records help forecast the amount of food to prepare;

33.3.2. when choices of menus or menu items are offered, production records help forecast the number of servings to prepare for each menu item thus reducing the possibility of running out of a choice before all students are served;

33.3.3. salad bar production sheets are useful when a large variety of vegetables are being prepared daily.

#### **§126-85-34. Donated Foods.**

34.1. Donated foods are agricultural commodities that the USDA makes available to various food program outlets including public and private schools and summer camps.

34.2. The amount spent for donated foods is determined by the United States Congress and is based on money value per lunch served. Each state is notified of its dollar entitlement based on the rate per meal.

34.3. In West Virginia, the West Virginia Department of Health and Human Resources is the distribution agency for USDA donated foods. Each SFA must sign an agreement with the DA in order to receive donated foods. The agreement assures the West Virginia Department of Health and Human Resources that donated foods will be distributed properly to schools and upon receipt by the schools, the food will be properly stored, inventoried and utilized by child nutrition programs.

34.4. There are two types of USDA foods that are available:

34.4.1. those purchased by USDA for use in specific programs such as the child nutrition program; and

34.4.2. those made available to schools and institutions as a result of price support of agricultural commodities.

34.5. The three groups of foods within the two types of USDA foods are:

34.5.1. Group A - fruits, meats and vegetables;

34.5.2. Group B - grains and oil products; and

34.5.3. Bonus items - Group A items offered that are not charged against entitlements.

34.6. The SFA is billed for transportation and storage costs. This cost may be passed on to the local school.

**§126-85-35. Allocation of Donated Foods.**

35.1. Criteria that may be used in determining the quantity of USDA donated foods to be allocated to each school are as follows: the number of lunches served, past rate of utilization of the food, amount on hand from previous allocations, relative economic need, and/or availability of proper storage facilities.

**§126-85-36. Procedure for Requesting Donated Foods.**

36.1. The SFA food service supervisor distributes to individual schools the West Virginia Department of Health and Human Resources (WVDHHR) commodity usage forecast sheet that includes instructions for completion and a date to be returned to the SFA. The commodity usage forecast sheet is completed once annually during late winter or early spring.

36.2. Any USDA donated food item (group "A" or group "B") may be used for training (home economics classes, vocational food classes, school food service training and Nutrition Education and Training (NET)).

**§126-85-37. Inventory.**

37.1. The WVDHHR requires that a perpetual inventory be kept at each school for all USDA donated foods. Donated foods inventories shall not be removed from the premises. These records must be current and available for review by an inspector from the WVDHHR. Reviews by the WVDHHR are made annually with follow-up reviews on negative findings.

**§126-85-38. Loss or Damage to Donated Foods.**

38.1. Loss or damage to USDA donated foods, from any cause whatever, shall be reported immediately to the WVDHHR. Full restitution shall be made to the WVDHHR for any loss or damage to donated foods resulting from failure to provide facilities for proper care or from any acts of negligence on the part of the SFA or local school.

38.2. Donated foods that are found to be damaged or out of condition and are determined unfit for human consumption by federal, state or local health officers shall be disposed of only in accordance with instructions received from the WVDHHR.

38.3. Special care must be taken during the summer months and school vacations to ensure that storage practices do not allow loss or damage of foods.

**§126-85-39. Commodity Processing.**

39.1. Federal regulations permit SDA and/or SFAs to enter into agreement with commercial companies to process any of the donated foods available. The SDA usually enters into a single state agreement under which all SFAs may participate. This eliminates the need for multiple SFAs to have identical agreements with the same processor for the same products. The processor bills the SDA. The SDA then bills the SFA.

39.2. The State Optional Contract (SOC) program makes specified products available to states for distribution to recipient agencies. The SOC program is a federally assisted program whereby the USDA enters into formal written federal-state agreements with state distributing agencies to have commodities converted into finished end products, for example, fresh chicken processed into chicken nuggets or patties. The USDA bills the SFA for the processing cost. The SDA then bills the recipient agencies.

**§126-85-40. Special Milk Program.**

40.1. USDA reimbursement enables schools without other food service programs to sell milk to students at a rate lower than cost. In participating schools, students determined eligible may receive milk free if the SFA elects to serve it. The SFA may or may not choose to provide free milk to students determined eligible by applications used for free or reduced price meals.

40.2. Current USDA regulations permit only schools and institutions without other food service programs to participate in the Special Milk Program and to serve an unlimited number of half pints of milk to a student at any time during the school's established milk breaks or meal periods.

40.3. Split session pre-kindergarten and kindergarten children may participate in the Special Milk Program if they do not have access to any school meal (school lunch or school breakfast).

**§126-85-41. Special Milk Charges and Reimbursement.**

41.1. The charge to students for milk shall not exceed the difference between the current rate of reimbursement and the cost of the milk plus an established distribution cost of no more than four cents per half pint.

41.2. Schools without food programs participating in the Special Milk Program are required by USDA regulations to document the actual cost of serving milk to students. Operating balances in excess of two months must be reduced by serving milk free to students or by reducing the cost to the students.

41.3. Schools serving/selling special milk to kindergarten and/or pre-primary students report income from milk sold on form 43-10-30S.

41.4. The charge to adults shall not be less than the cost of the milk. Reimbursement for milk served to adults is not permitted.

41.5. In non-pricing programs, all milk served through the Special Milk Program is reimbursed at the current rate of reimbursement per half pint.

**§126-85-42. Milk Shakes.**

42.1. If milk shakes are sold or given free under the Special Milk Program in schools having no other food service program, the milk shake formula must be approved by the WVDE, Office of Child Nutrition.

**§126-85-43. Special Milk Reporting Procedures.**

43.1. A daily record of the actual number of half pints of milk served students and adults shall be maintained on Form WVDE 43-10-30S. The report must be detailed daily at each participating school. The monthly claim for reimbursement is based on information recorded on this report. The completed form is submitted to the SFA on or before the fifth day of the succeeding calendar month. A copy will also be filed at the school.

43.2. At the end of each month during which milk was served to students, a monthly financial report, Form WVDE 43-10-31 is completed by each participating school. Financial data provided on this report is the basis for justifying reimbursement. The

completed report is submitted to the SFA on or before the fifth day of the succeeding calendar month. A copy will also be filed at the school.

43.3. The school or SFA is responsible for sending a copy of Form WVDE 43-10-30 to the WVDE for reimbursement.

**§126-85-44. Free and Reduced Price Meal and Free Milk.**

44.1. Schools participating in the National School Lunch and/or Breakfast Program are required to serve free and reduced price meals to students determined eligible by the current USDA Income Eligibility Guidelines.

44.2. To make it possible for a student to receive a free or reduced price meal, USDA regulations set forth income eligibility guidelines. A policy statement that delineates the policies and procedures used in providing free and reduced price meals for students is approved each year.

**§126-85-45. Applications for Free or Reduced Price Meals.**

45.1. Non-computerized program.

45.1.1. Applications and the Letter to Parents shall be sent to parents or guardians of each student as early as possible in the school year to allow time for the return of applications by the end of the first full week of school. The school principal, or a designated person, shall review all applications received and determine eligibility according to information given on the application. Parents or guardians shall be notified of the status of approval, change or termination of benefits (WVDE 43-10-20).

45.2. Computerized programs.

45.2.1. County school systems or individual schools may choose to approve free and reduced price meal applications by computer. A computer-generated application may be sent to the parents to update annually for continued program benefits.

45.2.2. Throughout the school year, applications may be received for students transferring from another school or from parents whose financial status has changed.

45.2.3. If a student has received free and/or reduced price meals and transfers to another school, a record of eligibility shall be maintained at the original school. Either a copy of the application may be made or a new one submitted to the receiving school.

45.3. Medicaid and educational benefits.

45.3.1. The USDA has granted permission for a multi-use application. The application has been expanded to allow parents or guardians to express an interest in receiving Medicaid benefits and vocational and technical education benefits under the Carl D. Perkins Act. Additionally, the privacy act statement on the reverse side of the application has been expanded to accommodate Medicaid and educational benefits.

45.3.2. When an interest in Medicaid benefits has been expressed in Part VII of the application, and Part VII has been signed by a parent or guardian, the following procedures are to be used to transmit the information to the appropriate authorities.

45.3.3. Each child's name, address, county of residence, and a Social Security number of an adult family member should be sent to the area Medicaid representative.

45.3.4. When an interest in vocational and technical education benefits has been expressed in Part VII with a parent or guardian signature, the student's name may be released to appropriate educational officials.

**§126-85-46. Approving Applications for Households Eligible for Temporary Assistance for Needy Families (TANF) or Food Stamp (FS) Benefits.**

46.1. Applications returned for review and approval that have TANF or FS numbers must include the following information: student's name; TANF or FS number; and parent's signature.

46.2. Approving Applications for Households not Eligible for TANF or FS benefits require the following procedures:

46.2.1. Applications returned for review that do not have TANF or FS numbers must include the following information: student's name; list of household members; social security number of the adult signing the application or indication they do not have one; the current amount of income received by each household member identified by the individual who receives it and the source of the income; and parent or guardian's signature.

46.2.2. All approved applications must show eligibility category (free or reduced price), reviewing official's signature, and date of approval or denial.

46.2.3. Applications must be filed by category with corresponding master lists.

46.3. Direct Certification.

46.3.1. Direct Certification is a simplified method of determining some children's eligibility for free meals under the National School Lunch Program and School Breakfast Program, or free milk under the Special Milk Program without having the family complete a free and reduced price meal or free milk application. The Office of Child Nutrition obtains documentation from the WVDHHR and prepares appropriate computer sorts that enable the SFA to match the names of children that are members of households currently certified to receive food stamps or TANF. Counties that are interested in participating in direct certification may call the Office of Child Nutrition for assistance.

**§126-85-47. Income.**

47.1. Income to be reported on the household's free and reduced price meal application form is a gross figure and generally is considered to be monies received on a recurring basis. Specifically, gross income means money earned before deductions for income taxes, employee's social security taxes, insurance premiums, charitable contributions, bonds and the like. Income includes the following:

- 47.1.1. payments of money for services, including wages, salary, commission or fees;
- 47.1.2. social security: supplemental security income;
- 47.1.3. dividends or interest on savings or bonds;
- 47.1.4. income from estates, trusts and investments;
- 47.1.5. cash withdrawn from savings;
- 47.1.6. public assistance or welfare payments;
- 47.1.7. unemployment compensations: workers' compensation and disability benefits;
- 47.1.8. government civilian employee or military retirement or pensions;
- 47.1.9. veterans' payments;

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- 47.1.10. pensions; retirement income and annuities;
- 47.1.11. alimony or child support payments;
- 47.1.12. regular contributions from persons not living in the household;
- 47.1.13. net income for self-employed farmers and business-persons, rental income and royalties;
- 47.1.14. students regular part-time earnings; and
- 47.1.15. other cash income.

47.2. Other cash income would include cash amounts received or withdrawn from investments, trust accounts and other resources, that would be available to pay the price of a child's meal.

47.3. Certain items of income are not to be reported on the application. Such income includes the following:

- 47.3.1. food stamps;
- 47.3.2. benefits received under the National School Lunch and Child Nutrition Acts;
- 47.3.3. monies received by volunteers for services performed under such programs authorized by the Domestic Volunteer Services Act of 1973, as amended;
- 47.3.4. military base housing or other subsidized housing, medical and dental services;
- 47.3.5. student financial (cash) assistance, such as grants and scholarships;
- 47.3.6. loans; and
- 47.3.7. student earnings such as paper routes or babysitting that are not a regular part time job.

47.4. If the family is unemployed a figure must be given even if this figure is zero (0). The word "none" is not accepted by USDA.

47.5. When there is a temporary reduction of income, eligibility should be determined on the present rate of income rather than on regular annual income. Persons may apply immediately at the time of reduction in income. Benefits become effective upon approval of the Free or Reduced application. The approving official should issue temporary approval of the application. The temporary approval shall be in effect until the time of recurring pay.

**§126-85-48. Determining Household Size.**

48.1. Basically, household size is determined by counting the number of related or unrelated individuals who live in a dwelling and who share living expenses or meals.

48.2. Students who are temporarily away at school and who receive their primary support from the family i.e., students attending boarding schools or colleges are counted as members of the household.

48.3. Military personnel not actually living with the household are not considered a member of the household for purposes of determining eligibility, but the money he/she sends to the household is included in the household's income.

48.4. A foster child is a child who is living with a family but who remains the legal responsibility of the welfare agency or court. For purposes of determining eligibility, a foster child is considered a household of one.

48.5. In cases where no specific welfare agency or court is legally responsible for the child; or where the child is living with at least one natural parent, other relatives or friends of the family, the child shall be considered to be a member of the family with whom he/she resides, and the size and total income of the household shall be used to determine the child's eligibility.

48.6. An adopted child is a child for whom a family has accepted legal responsibility and is considered to be a member of the household in which the child resides.

48.7. An institutionalized child is a child who resides in a residential-type facility that the state has determined is not a boarding school. A child who is institutionalized is considered to be a household of one and, in most cases, has no income. Only income a child earns from full time employment and/or personally receives while in residence at the institution, may be considered as income.

48.8. An older child, totally responsible for himself/herself, who does not reside as a member of a household (but rather as a single economic unit) is considered a household

of one. Earned income and money from all other sources are considered income for such a child.

48.9. A student who attends but does not reside in an institution is considered a member of the household in which he/she resides. Eligibility must be determined by the household size and income of that household.

48.10. Foreign exchange students, refugees, aliens and citizens of other countries and/or their dependent children are considered to be members of the household in which they reside. The total household size and income are used in determining eligibility.

48.11. Whether the stepparent supports a stepchild, the child in this situation falls within the definition of a household. Therefore, the total household income, including TANF or child support payments to the parent, must be included in determining eligibility.

**§126-85-49. Reviewing Official's Responsibilities.**

49.1. 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 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.

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

49.2.1. a written, signed complaint;

49.2.2. illegible, incomplete or questionable information on the application;  
and/or

49.2.3. the USDA required verification sampling.

49.3. 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.

49.4. All households must be promptly notified of their eligibility status. In making determination regarding eligibility for meal benefits, increases in benefit levels must be made no later than three (3) operating days from the final decision.

49.5. 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.

49.6. Indication of denial shall be sent to parents or guardians after receipt of the completed application.

49.7. Other questions pertaining to free/reduced price meal policies are answered in the Eligibility Guidance for School Meal Programs.

**§126-85-50. Reviewing Official's Completing an Application.**

50.1. A reviewing official may complete an application for a student known to be needy if the household fails to apply.

50.2. When exercising the option in §126-85-50.1, of this policy, the school official must complete an application on behalf of the student based on the best household size and income information available and make an eligibility determination. The source of the information must be noted. Social security numbers of household members need not be secured and these applications may be excluded from verification. The household must be notified that the student has been certified and is receiving free or reduced price benefits.

50.3. The option in §126-85-50.1, of this policy, is intended for use in individual situations and does not allow eligibility determinations for categories or groups of children.

**§126-85-51. Providing Meals Prior to Application Approval.**

51.1. During the opening weeks of school, before applications for the current school year are received and approved, school officials shall serve free and reduced price meals or free milk to eligible students. To assist with eligibility determination during the first days of school, officials may use:

51.1.1. applications on file from the previous school year;

51.1.2. self-certification of secondary students under special circumstances;

51.1.3. new students in a school with older siblings that were approved for benefits the previous year; and/or

51.1.4. students that transfer within the county.

51.2. If students are provided free or reduced price meals or free milk in eligible schools (based on the previous year's application approval) during the period prior to the current year's application approval and are later determined to be ineligible, reimbursement may be claimed at the free or reduced price rate for those meals already served.

51.3. If students are provided free or reduced price meals or free milk in eligible schools (not based on the previous year's application approval) during the period prior to the current year's application approval and are later determined to be ineligible, reimbursement may not be claimed at the free and reduced price rate. These meals may be reimbursed at the paid rate.

#### **§126-85-52. Application Files and Working List.**

52.1. Following the review and approval or denial of applications, a file of current applications and working list of all applications shall be established and maintained according to:

52.1.1. Active free. Students whose current household income and size indicates free status according to USDA Income Eligibility Guidelines.

52.1.2. Active reduced. Students whose current household income and size qualifies them for reduced status according to USDA Income Eligibility Guidelines.

52.1.3. Temporary free/temporary reduced. Students whose current household income indicates eligibility according to USDA Income Eligibility Guidelines determined temporary based on: unemployed or income from unemployment compensation, worker's compensation; seasonal unemployment; temporary layoffs; strikes; temporary use of public assistance; pending approval for public assistance; zero (0) income; or anticipated change in income.

52.1.4. Inactive free/inactive reduced. Students who have withdrawn or transferred.

52.1.5. Denied. Students whose current household income does not meet the USDA Income Eligibility Guidelines.

52.2. The temporary file of approved free and reduced price meal applications must be reviewed every two months through parent or guardian contact. The dates of such reviews, contacts and the current status shall be noted on the application or the suggested form for updating information by the reviewing official. The working list shall be corrected, if needed, to agree with the application classification.

52.3. A working list of students shall be maintained in the same order as the filed applications with indication of status change and effective date.

52.4. All applications and documentation of action taken shall be maintained for three years plus the current school year.

**§126-85-53. Collection Procedure.**

53.1. A procedure to collect payments from students for meals must be established. The procedure must prevent the overt identification of students receiving free or reduced price meals and enable schools to obtain an accurate daily count of the number of free, reduced price, fully paid and adult meals served under the school lunch and breakfast programs. The collection procedure shall be approved by WVDE. The procedure is reviewed along with the county application for program benefits. Suggested methods of collection may be found in the Policy Statement. Any variation in the suggested methods must be submitted in detail to WVDE for approval prior to implementation.

**§126-85-54. Daily Meal Count (Point of Service Count).**

54.1. During the period of school breakfast and/or school lunch service, schools are required to follow a system for counting, recording and reporting the number of meals served adults and students. The system shall provide an accurate daily record of the actual number of student meals at the point of service that were served free and at the reduced price or fully paid rate. The system shall prevent overt identification of students served free or reduced price meals. Suggested methods of obtaining point of service meal counts may be found in the Policy Statement. Any additional methods anticipated must be submitted in detail to WVDE for approval prior to implementation.

54.2. Systems that are accepted include:

54.2.1. computerized point of service;

54.2.2. coded tickets collected on the line, counted by category;

54.2.3. coded tickets that are punched or marked on the line used with a counter to determine number of meals served by category;

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54.2.4. coded roster checked at point of service; and

54.2.5. calculator tapes used with other source documents such as coded ticket or student number.

54.3. Systems that are not acceptable include:

54.3.1. tallies (slash marks ///);

54.3.2. memory (categorizing free and reduced meals by remembering student's eligibility);

54.3.3. different color tickets/tokens;

54.3.4. updated morning counts;

54.3.5. tray count; and

54.3.6. deduction (cash received divided by cost per meal, total meals minus free and reduced equal paid, total meals minus paid and reduced equal free).

54.4. Schools must maintain, for a period of one year, source documents to verify number of meals claimed for reimbursement.

54.5. In instances when second meals are served or sold, accurate identification of the student receiving the second meal is required. All second meals must be recorded as nonreimbursable meals.

**§126-85-55. Discrimination Based on Eligibility.**

55.1. No discrimination shall be made against any student because of inability to pay, nor shall the student's name be published nor identification made in any other way. Students eligible for free or reduced price meals shall not be required to:

55.1.1. work for their meals;

55.1.2. use a separate lunchroom;

55.1.3. go through a separate serving line;

55.1.4. enter the lunchroom through a separate entrance;

55.1.5. eat meals at a different time; nor

55.1.6. eat a different meal from the one sold to students paying the full price.

55.2. It is not considered discrimination to serve meals to students in a separate location and/or at a different time if the students are being disciplined for violation of school policies. However, there must be no difference in treatment of students based on eligibility to pay for meals. In no case shall a student be denied a meal or served a different type of meal as a means of discipline or as a result of discipline for violation of school policies.

55.3. It is not considered discrimination to serve a different meal to the student who requires special consideration due to a disabling condition supported by a physician's statement. The serving of a meal to a student with special dietary needs supported by a statement signed by a recognized medical authority is not considered discrimination.

#### **§126-85-56. Student Help.**

56.1. USDA regulations state that recipients of free or reduced price meals shall not be required to work for those benefits. However, they are not prohibited from working voluntarily in the lunchroom. Some schools employ student helpers in the lunchroom for monetary or other compensation. In these cases, parents of all workers should be informed in writing that their children have volunteered to work. The letter should state that for students who have been certified, continued eligibility is in no way dependent upon the student's working status. Additionally, the letter should not be a part of, nor attached to, the free and reduced price letter to parents, application or notice of approval/denial.

56.2. Students who work in the food service program can be given a free lunch. However, free or reduced price meal reimbursement may not be claimed unless the students' application has been approved in accordance with their eligibility, either full price, reduced price or free.

#### **§126-85-57. Verification USDA.**

57.1. Each school food authority must verify a sample of the total number of applications approved for benefits by selecting a sample through either random or focused sample. The sample must be taken from approved free and reduced price applications on file as of October 31 of each year. An application is counted as one application regardless of whether it is a multi-child application or an application for one child. The sample size depends on the number of paper applications, not the number of children represented. Students that were approved through Direct Certification are excluded from verification.

Confirmation of eligibility must be completed by December 15 of each year. Sponsors may request an extension by notifying the Office of Child Nutrition. The request must be received by November 30 of each year. The Sponsors Summary Report is due to WVDE by January 10 of each year.

**§126-85-58. Application Selection.**

58.1. SFAs shall satisfy the verification requirement by using either random sampling or focused sampling.

58.1.1. Random sampling consists of selecting and verifying three percent of applications on file. Procedures have been developed to provide a method for the random selection of free/reduced applications. Documentation of the random selection is to be kept on file at the school.

58.1.2. Focused sampling consists of (1) selecting and verifying a minimum of one percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within \$100 or yearly incomes within \$1,200 of the income eligibility limit for free or reduced price meals plus (2) the lesser of one-half percent or 500 applications of food stamp households that provide food stamp case numbers in lieu of income information. Procedures have been developed to provide a method for the focused sampling selection of free/reduced applications. Documentation of the focused sampling will be kept on file at the school. Selection of Option 2 for verification purposes shall be the responsibility of the WVDE or the SFA and not the individual schools.

**§126-85-59. Verification Procedures.**

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

59.2. Procedures for developing a consistency check for verification will provide a uniform method for verifying information on free/reduced meal applications.

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

59.4. Following the consistency check, if there is a difference between documentation and application, the household must be informed of the findings. This must be accompanied by a new free/reduced price meal application. When the new application

has been approved the household shall be promptly notified. Increases in benefit levels must be made no later than three (3) operating days from the final decision.

59.5. When the new application has been denied or a reduction in benefits has occurred the household shall be notified within ten working days. An appeal can be initiated at this time.

59.6. During the ten day period and continuing through the appeal process the student's status remains the same. If no response has been received within the ten days the household must be notified of a loss of benefits.

59.7. When the verification procedure has been completed, a School Summary Report shall be sent to the SFA and a copy filed at the school.

59.8. The SFA shall compile all School Summary Sheets and send a copy of Sponsor's Summary Report to WVDE.

**§126-85-60. Release of Information.**

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

60.2. This information may also be used to determine eligibility for free textbooks, workbooks and school supplies, and to provide student information to access Medicaid and Vocational and Technical Education benefits or other information authorized by federal regulations or parent release. The release of this information may only be authorized by the parent or guardian in Section VII of the application.

**§126-85-61. Reporting Procedure.**

61.1. A daily record of the actual number of meals and/or milk served students and adults shall be maintained on Form WVDE 43-10-30-S (Daily Record of Program Operations) completed according to instructions. The report must be detailed daily at each participating school by a responsible person. The monthly claim for reimbursement is based on information recorded on this report. The completed form is submitted to the SFA on or before the fifth day of the succeeding calendar month or as required by the SFA. A copy is to be filed at the school.

61.2. Computerized Entries - Schools utilizing micro-computers shall maintain daily records of meal service that provide identical information as required on form WVDE 43-10-30-S.

61.3. At the end of each month during which meals and/or milk were served to students, a monthly financial report, Form WVDE 43-10-31, is completed by each participating school according to instructions. Schools in counties with centralized purchasing and accounting do not need to complete the WVDE 43-10-31 monthly. Financial data provided on this report is the basis for justifying reimbursement payments. The completed report is submitted to the SFA on or before the fifth day of the succeeding calendar month or as required by the SFA. A copy is to be filed at the school.

61.4. The SFA is responsible for sending copies of the five following monthly or annual consolidated reports or appropriate computer printouts to the respective WVDE coordinator: WVDE-43-10-30-S (Daily Record Of Program Operations), WVDE 43-10-31 (Monthly Financial Report), WVDE 43-10-30 (Monthly Claim for Reimbursement), Sponsor's Summary Report (Verification), and WVDE 43-10-32 (Annual Report).

61.5. All reports, invoices and other records pertaining to the Child Nutrition Program at both the school and SFA level are to be maintained for three years plus the current year.

#### **§126-85-62. Reporting Deadlines.**

62.1. 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 deadline date will not be paid until the following month. Claims submitted after the federally mandated 60-day deadline cannot be processed unless authorized by the USDA.

62.2. 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 WVDE is required quarterly on the following dates: October 15th, January 15th, April 15th and July 15th.

62.3. WVDE 43-10-32 (Annual Report) - The WVDE 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.

62.4. The correct and complete Annual Report shall be on file at the WVDE 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.

**§126-85-63. Reimbursement Procedure and Policy.**

63.1. Each SFA prepares a Monthly Claim for Reimbursement, Form WVDE 43-10-30 from the data submitted by each participating school under its jurisdiction. Form WVDE 43-10-30 is submitted to the WVDE on or before the tenth day of the succeeding month to claim reimbursement for eligible meals and/or milk. Payment of the claim for reimbursement is made to the SFA which will forward the appropriate amounts to the individual schools. ..

63.2. The WVDE shall make reimbursement payments to SFAs and/or schools only in connection with meals meeting the requirements of a reimbursable breakfast or lunch. Second meals and/or second helpings served to students are not eligible for reimbursement. In no case shall reimbursement be claimed for meals and/or milk served to adults. ..

63.3. Average and/or maximum reimbursement rates are determined by the USDA for programs operating under the National School Nutrition Act. Since these rates are subject to change, only the current rates are included and will need to be updated periodically. SFAs that served 60 percent or more free or reduced price meals during the second preceding year are entitled to a higher rate of reimbursement for lunch.

63.4. In all cases, the total reimbursement paid to a SFA and/or school shall not exceed the actual allowable costs of preparing and serving the meals for which the reimbursement is claimed.

63.5. Since September, 1985, WVDE has established the 10th of each month as the deadline date for monthly claims payment. Payment of county claims received after the deadline date will not be paid until the following month. Federal regulations require all county claims for reimbursement to be submitted to WVDE no later than 60 days after the end of the month. Claims received after the 60 day deadline cannot be paid unless authorized by the USDA.

63.6. Reimbursement rates to schools within a county may be varied so long as these do not exceed the maximum rate on the list of reimbursement rates. The SFA will receive only the standard reimbursement rate per meal served. If reimbursement rates paid one (or more) school(s) are higher than standard, it will be necessary to lower the rates paid to another school or schools in order to allocate only the total amount of reimbursement received. Such schools receiving higher than standard reimbursement rates must be able to document costs for preparing and serving meals to justify the higher reimbursement.

**§126-85-64. Accurate Participation Records.**

64.1. Since participation data is the basis for reimbursement claims, it is imperative that the Daily Record of Program Operations reflects complete and accurate information. The system used to obtain participation data (including all types of computer systems) must guarantee an accurate daily count concerning the following: actual number of meals served daily by category, regardless of when payment was made; all meals served to all adults (program and nonprogram); all meals served as "second meals" and/or other non-reimbursable meal service; a la carte breakfast sales; sale of extra milk; and catered meals.

**§126-85-65. Accurate Income Records.**

65.1. Records and receipts documenting income to the program shall be maintained by a responsible person in the school in accordance with the procedures listed below:

65.1.1. All income to the program shall be properly receipted, reported and deposited.

65.1.2. There must be separate deposit slips that list only monies deposited to the child nutrition account.

65.1.3. Financial reports must reflect accurate cash balances, cash due the program, source of cash due the program and all invested funds with accruing interest.

65.1.4. Bad debts are non-allowable costs to the child nutrition program. Payments for bad debts are not reported as new program income.

**§126-85-66. Accurate Expenditure Records.**

66.1. The USDA, FCS Instruction 796-1, Revision 2, requires that all expenditures from the child nutrition account be supported by source documents that adequately identify the use of program funds for program purposes. All source documents will identify direct allowable program costs as reported on Form WVDE 43-10-31 (Monthly Financial Report) at the school level.

66.2. USDA regulations require that the SFA maintain effective control over, and accountability for, all funds, property and other child nutrition programs' assets to assure that they are safeguarded and used solely for authorized purposes. These costs are reported in order to claim USDA funds at the SFA level and to justify individual costs at the

school level. Therefore, all records, reports, itemized invoices and labor vouchers to support program expenditures shall be maintained at both the school and the SFA levels for the required length of time of three years in addition to the current year.

66.3. Income accruing from operation of the child nutrition program may be used for program purposes but not for: purchase of land; acquisition or construction of buildings; and/or addition(s) to existing buildings.

**§126-85-67. Allowable Costs: Food.**

67.1. All foods purchased with school child nutrition program funds shall be supported by itemized invoices that list as a minimum: specific food items; amount purchased; cost per unit; total cost; and purchase date.

67.2. All invoices must be signed by the person who receives the food.

67.3. A cash register tape without a separate itemized listing of all required information is not acceptable and items purchased will not be considered allowable expenses.

67.4. Allowable food costs shall not include the value of USDA foods or the value of missing inventory items.

67.5. When food and non-food items are listed on the same itemized invoice, the costs shall be separated and reported in the appropriate categories on Form WVDE 43-10-31 (Monthly Financial Report).

67.6. The SFA shall ensure that the cost of food claimed for meal reimbursement includes only the cost of food used in child nutrition programs.

67.7. Coffee may be purchased with program funds to be served with adult meals. Coffee served other than with adult meals is not an allowable child nutrition program expense.

**§126-85-68. Allowable Costs: Milk.**

68.1. Itemized, signed invoices must be available to support the cost of all milk used in child nutrition programs. The SFA shall ensure that the cost of milk reported on Form WVDE 43-10-31 includes only milk used for meals and the sale of extra milk in child nutrition programs.

68.2. The child nutrition program funds may not be used to pay for milk or other beverages sold in the school if the proceeds do not accrue to the child nutrition program account.

68.3. When food items, such as cottage cheese and ice cream, are included on "milk" invoices, the cost of these items shall be separated and reported as "food" on Form WVDE 43-10-31.

**§126-85-69. Allowable Costs: Labor.**

69.1. Itemized, signed documentation of labor costs must be on file at the school to support the cost of labor, which may include:

69.1.1. salaries of school food service personnel including fringe benefits such as social security, retirement and workers compensation;

69.1.2. salaries of students who are employed in child nutrition programs;  
and/or

69.1.3. direct salary costs of non-cooking personnel with specific food service responsibilities as documented by function and time sheets.

69.2. The SFA shall establish controls to ensure that no labor cost be claimed for federal funds more than once. Therefore, partial salary payments to secretaries, clerks, principals, teachers, custodians, truck drivers or any other SFA employee included in data used to obtain WVDE indirect cost rates, are not allowed as direct labor costs. In addition, supplemental payments to regular employees of the SFA are not allowable costs, except in instances where there is documentation that the payment is for services beyond regular responsibilities of that employee or for time spent beyond the regular working hours.

**§126-85-70. Allowable Costs: Supplies and Expendable Equipment.**

70.1. Supplies and expendable equipment necessary for the operation of child nutrition programs shall be supported by itemized invoices signed by the person who received the items.

70.2. Expendable equipment is equipment with a useful life of one year or less or with an acquisition cost of less than \$5,000.

70.3. The SFA shall ensure that all supplies and expendable equipment purchased with school food service funds are used only for the direct operation of child nutrition programs.

70.4. Garbage bags, detergents and other supplies used for purposes other than school food service are not allowable child nutrition program expenses.

**§126-85-71. Allowable Costs: Non-Expendable Equipment.**

71.1. Non-expendable equipment includes all food service equipment with a useful life of more than one year and an acquisition cost of \$5,000 or more.

71.2. Depreciation is the expense associated with physical deterioration of equipment and consequent loss of value. Depreciation may be claimed as a direct cost for reimbursement purposes. All depreciation claimed as child nutrition program costs for federal reimbursement must be documented by the SFA.

**§126-85-72. Allowable Costs: Indirect.**

72.1. In addition to direct costs of operating child nutrition programs, indirect costs are incurred. Indirect costs are those that contribute to the cost of producing a meal but are not readily identifiable to the child nutrition account, such as custodial services. USDA policy allows these to be claimed by the SFA for reimbursement purposes. The allowable indirect costs of an SFA shall be determined through the use of an indirect cost rate applied to all expenditures except food, on an annual basis.

72.2. Financial data to obtain the indirect cost rate is submitted to the WVDE Division of Administrative Services by the SFA. The responsibility for the development and assignment of indirect cost rates for public schools is shared by the USDA and the WVDE.

**§126-85-73. Non-Allowable Costs.**

73.1. USDA FCS Instruction 796-1, Revision 2, lists areas of costs that are not eligible for inclusion in claims for payment from USDA funds and are not allowable costs from the child nutrition account. These are:

73.1.1. loan repayments;

73.1.2. bad debts;

73.1.3. fines and penalties;

73.1.4. interest and financial costs;

73.1.5. legislative expenses or executive direction;

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73.1.6. contingency reserve contributions;

73.1.7. depreciation or use allowance for publicly owned buildings and improvements;

73.1.8. direct labor costs for administrative personnel above the school food service employee level without direct program responsibility;

73.1.9. USDA donated food or cash received in lieu of food;

73.1.10. other donations of cash, services and goods;

73.1.11. equipment depreciation costs for:

- a. items that have been fully depreciated;
- b. items in storage for future use or disposal; and
- c. that portion of the equipment purchased with federal funds.

73.1.12. capital expenditures for:

- a. land or construction; and
- b. facilities.

73.1.13. occupancy by contractual agreements that are classified as rental-purchase or leased with an option-to-purchase; or

73.1.14. cost associated with sales or service to adults and other a la carte sales.

**§126-85-74. Shared Costs.**

74.1. Equipment such as computers, typewriters, copy machines or calculators may be purchased for use jointly by the child nutrition and instructional programs. Cost of the equipment shall be pro-rated according to time of use by each program. Documentation of the time study must be kept on file at the school and SFA. In no case shall the child nutrition program pay more than the proportional share of the total cost of the equipment.

74.2. Only the child nutrition program's share of the cost may be included in the calculation of depreciation.

**§126-85-75. Procurement Standards.**

75.1. USDA regulations provide standards for the use of the child nutrition program funds. These standards ensure that the procurement of supplies (including food and equipment) and services is in compliance with applicable federal law and executive orders. A complete description of the procurement standards for child nutrition programs is found in 7 CFR Part 3015.180 or Attachment O, OMB Circular A - 102.

75.2. Each SFA shall maintain a written code of conduct to govern the performance of its employees who have the authority to contract or expend program funds. The contract shall provide for disciplinary action for violators of such standards. No person shall solicit nor accept personal gratuities, favors or anything of material monetary value from contractors and vendors or potential contractors and vendors.

75.3. All procurement transactions, regardless of method or dollar value of purchase, shall be conducted in a manner that will provide open and free competition. Positive efforts shall be made to utilize small businesses and minority-owned businesses as sources of supplies and services. The cost plus a percentage of cost contract type shall not be used. A firm-fixed-price contract or cost reimbursable contract is allowable.

75.4. Each SFA shall also have written selection procedures for procurement. Federal regulations require agencies receiving federal funds to obtain price quotations from an adequate number of qualified sources (three) and to purchase from a responsible vendor quoting the lowest price.

75.5. Regulations specify that formal advertising or competitive sealed bids must have complete and adequate, written specifications; such descriptions, however, shall not contain features that unduly restrict competition. If a particular brand is specified, a clear description of the specific features that must be met shall be clearly stated. The invitation to bid must be publicly advertised and all bids shall be opened publicly at the time and place stated in the invitation to bid. A firm-fixed-price contract shall be awarded to the lowest, responsible bidder. Any bid may be rejected when there is documentation of unsuccessful bidder performance.

75.6. All written contracts must contain a Certification Regarding Debarment and a Non-Collusion Affidavit.

75.7. Contracts awarded for an extended period of time or recurring contract renewals could be considered a violation of providing the opportunity for open and free competition.

75.8. Program aids to assist with purchasing are available from the WVDE or the SFA. School personnel may contact these offices for technical assistance.

**§126-85-76. Excess Balance: Net Cash Resources.**

76.1. The WVDE shall review annually the net cash resources reported by the SFAs. If the net cash resources exceed three months normal operating costs then: a justification letter must be filed with the WVDE stating a short term plan of action for use of the funds; or adjustments in the rates of reimbursement shall be made until the net cash resources of the SFA are reduced to the required level.

76.2. If net cash resources are reflected as a negative amount, a justification must be filed with the WVDE along with the CNP Annual Report.

76.3. The SFA shall review annually the operating balance reported by the schools under its jurisdiction.

**§126-85-77. Consolidation of Schools.**

77.1. The WVDE 43-10-30S (Daily Record of Program Operations) for individual schools are consolidated by the School Food Authority (SFA) into the WVDE 43-10-30 (Monthly Claim for Reimbursement). All SFAs are required to do daily edit checks for their individual schools (from the WVDE 43-10-30S) before submission of their Claim for Reimbursement (WVDE 43-10-30). Failure to do edit checks as required by federal regulations, 5210.8(a)(2) and (3), could lead to forfeiture of the Claim for Reimbursement.

77.2. After the daily edit checks are performed and the schools' reports are consolidated, child nutrition program funds may be credited to the school food service program account(s) of the school(s) that the students will attend in proportion to the number of students involved.

**§126-85-78. Pricing of Adult Meals.**

78.1. Meals served to teachers, administrators, custodians and other adults, such as school patrons, elderly volunteers and Foster Grandparents Program participants, must be priced so that the adult payments in combination with income from other sources (such as state or local fringe benefits or payroll funds, or funding from voluntary agencies) are sufficient to cover the meal costs. The charge for adult meals is determined by the county board of education and approved by the WVDE in the Agreement between SFA and State Agency. It is recommended that the charge(s) be established at or near the county per

meal costs. Adult meals are not reimbursable nor counted in the commodity allocation entitlement.

78.2. Meals served to adults who are directly involved in the operation and administration of child nutrition programs may, at the discretion of the SFA, be furnished at no charge. As such, their cost may be fully attributed to the nonprofit child nutrition program operation and supported by revenues to the child nutrition program. These meals should be shown as program adult meals, column 6 or 12 on form 43-10-30S. School employees who supervise during the lunch or breakfast periods, sell tickets or perform other duties directly related to the food program should do so on a contract basis as described in W.Va. Code §§18A-4-14 and 16.

78.3. Meals served to adults not directly involved in the child nutrition program such as administrators, teachers, aides, student teachers and other persons working or visiting in the school may not be served free of charge unless the cost of the meal is covered from another source. These meals must be reported as non-program adult meals.

78.4. Student teachers and other persons working in the schools who are not enrolled in the educational program of the SFA are not eligible for free or reduced price meals. They must pay the same price as adults unless the cost is paid by another agency.

#### **§126-85-79. Inventory Records.**

79.1. The physical or perpetual inventory is necessary to document food and supply costs as required on the Monthly Financial Report, Form WVDE 43-10-31. USDA donated food items must be inventoried separately (See the Donated Foods section). These inventories shall be maintained by a responsible person and copies shall be kept on file at the school for one year following the date that they are prepared. The "cost of food used" as claimed for USDA reimbursement shall not include the value of USDA donated foods or missing inventory items.

79.2. A child nutrition program inventory of large equipment shall be maintained for each participating school. USDA regulations require a reconciliation of equipment on hand at the end of each school year. All food service equipment that has fully depreciated must be removed from active inventory. Any new or transferred equipment (\$5,000 or more per unit) acquired during the year shall be routinely entered in the inventory on a predetermined date, no later than August 31. All funds received from the USDA Food Service Equipment Assistance (FSEA) account toward the purchase of a specific item of equipment shall be subtracted from the item's reported purchase and installation price.

**§126-85.80. Equipment Depreciation.**

80.1. Each school must maintain a complete equipment inventory file that lists all non-expendable equipment. The inventory will include:

80.1.1. an assigned inventory number for each piece of equipment;

80.1.2. all equipment on hand for program use that has been purchased with an acquisition cost of \$5,000 or more;

80.1.3. serial numbers where applicable;

80.1.4. the month and year of installation;

80.1.5. the month and year of initial depreciation;

80.1.6. the acquisition cost;

80.1.7. the amount of FSEA funds, if any, received for equipment items on the inventory;

80.1.8. the adjusted cost to the child nutrition program (acquisition cost less FSEA funds received); and

80.1.9. life termination date.

80.2. The method described is straight line depreciation in which non-expendable equipment is fully depreciated upon completion of its useful life. Once an inventory file has been established, the total value of equipment will be changed annually only when a new piece of equipment is added, traded, scrapped or fully depreciated.

**§126-85-81. USDA Food Service Equipment Assistance.**

81.1. Although Public Law 97-35 discontinued the FSEA Program that was previously available, equipment funded or partially funded with FSEA funds must comply with the following property management requirements contained in USDA regulations:

81.1.1. Disposition procedures must be followed when equipment is no longer needed for program purposes or when participation in the child nutrition program of the WVDE is discontinued.

81.1.2. Title for the equipment is vested in the purchaser.

81.1.3. Records shall be maintained that include a description of the equipment, manufacturer's serial number (or assigned identification), the acquisition date and cost, source or vendor, amount of FSEA funds, current location and use, and all final disposition data.

81.1.4. A physical inventory shall be conducted by the SFA at least once every two years.

81.1.5. Controls to prevent loss, damage or theft of the equipment and adequate maintenance shall be provided.

**§126-85-82. Guidelines for Purchase of Computers for Automation of School Food Service Functions.**

82.1. Computers may be utilized to assist with several tasks related to the operation of child nutrition programs at both the school and sponsor levels. Administrative functions may include, but are not limited to, approving free and reduced price meal applications, maintaining a master list of students, assisting with point-of-service count, producing daily and monthly reports and documenting revenues and expenses. Meal service functions may include maintaining inventory records, documenting food production, calculating meal costs and assisting with menu planning.

82.2. Adequate documentation must be maintained to justify expenditure of program funds for both computer hardware and software.

82.3. Sponsors should approve all purchases made by individual school programs to ensure that hardware (including printers and modems) and software purchased with program funds will be compatible with the sponsor's plan for automation of child nutrition reporting.

82.4. Child nutrition program funds may be used to purchase hardware, (including printers and modems) software and supplies at 100% of the cost or pro-rated. Adequate documentation is required for either of these.

82.5. To comply with procurement regulations, CFR 7 Part 3015, pro-rated costs must be documented by time/usage records on the equipment.

82.6. If child nutrition funds purchase equipment at 100% of the cost, the hardware (including printers and modems) and software must be accessible at all times for use by personnel who are responsible for the various food service tasks.

82.7. If child nutrition funds purchase equipment on a pro-rated basis, the hardware and software must be located in a "general use" area of the school for accessibility. (For example, private offices and classrooms would not be considered "general use" areas.)

82.8. For pro-rated usage, records must be maintained to document usage by time (or other means) for food service functions. The records must justify the pro-rated portion of expenditures for hardware, including printers and modems, software and other supplies paid by child nutrition funds.

**§126-85-83. Monitoring by School Food Authority (SFA).**

83.1. AccuClaim regulations (7 CFR Part 210.8) require each SFA to monitor its program accountability. No less than one on-site review of the lunch counting and claiming system in place at each school must be completed by February 1 of each year. Each on-site review must ensure that the school's claim is based on the counting system authorized by the WVDE, and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid lunches for each day of operation. The monitoring reports must be maintained at the SFA office for review by the state and/or federal personnel. When the review discloses any problem requiring corrective action, a follow-up on-site review must be conducted within 45 days of the initial review to determine that the problem has been resolved. Documentation of the follow-up review must also be maintained at the SFA office. A sample sponsor on-site monitoring review form containing the required minimum review areas is available from the Office of Child Nutrition.

**§126-85-84. Monitoring by State Agency.**

84.1. State and local education agencies are responsible for the administration and supervision of child nutrition programs funded under the National School Lunch Act and the Child Nutrition Act. Coordinators for the WVDE Office of Child Nutrition monitor local operations, provide technical assistance and assist with staff development of food service personnel.

84.2. Coordinators are responsible for monitoring programs in public schools in the 55 counties. The monitoring duties of these representatives are performed through On-Site Visits to review food program operations by reviewing reimbursement claims, program reports, management of food service funds, procurement procedures and other aspects of the program.

84.3. Two types of reviews are conducted: 1) CRE, and 2) The On-Site Visit.

84.4. The On-Site Visit is a review of one or more phases of the Program. For example, an On-Site Visit to a school or SFA may be made to specifically review record

keeping systems or menus and meal quality without reviewing the total Program operation. A record of this type of review is made on Form WVDE 43-30-01-S entitled Record of On-Site Visit.

**§126-85-85. Corrective Action.**

85.1. If, during the On-Site Visit, a need for corrective action is found, the problem is noted on the Plan of Corrective Action form WVDE 43-40-22. Written response by the administrator is required within ten working days.

85.2. If, on the day of the review, the meals served do not meet USDA requirements for meal components and quantities, the entire reimbursement for the date of the visit will be deducted from the current claim for reimbursement.

85.3. Errors found during the review of free and reduced price meal applications are listed on the Form WVDE 43-10-13-ME (Noted Exceptions). The current monthly claim for reimbursement will be corrected through the day of the review. The reviewing official shall calculate the amount of overpayment or underpayment for meals claimed during the previous months and adjustments will be made by the WVDE finance office. Form WVDE 43-40-22a will be completed and a copy given to the SFA.

**§126-85-86. Assessment Procedure Free and Reduced Meal Application.**

86.1. While checking applications during an On-Site Visit, if errors are found, the WVDE coordinator will allow the school official to make any correction possible at the time of the review. The remaining applications with errors will be listed on Form WVDE 43-10-13-ME (Free and Reduced Applications with Noted Exceptions). The school official will be given the opportunity to provide proof of the number of meals the student consumed using the date of the application approval, the school calendar, attendance register and/or meal participation roster. Meals to be assessed may be from the day of application approval to the day before the visit of the WVDE coordinator.

86.2. Assessment amounts will be calculated using the error code listed below:

86.2.1. Error Code A. Approved free should have been reduced. The difference between free and reduced reimbursement rate is multiplied by the number of meals served and claimed.

86.2.2. Error Code B. Approved free should have been ineligible. The free reimbursement rate is multiplied by the number of meals served and claimed.

86.2.3. Error Code C. Approved reduced should have been free; no assessment.

86.2.4. Error Code D. Approved reduced should have been ineligible. The reduced reimbursement rate is multiplied by the number of meals served and claimed.

86.2.5. Error Code E. Denied should have been free; no assessment.

86.2.6. Error Code F. Denied should have been reduced, no assessment.

86.2.7. Error Code G. Insufficient data. Based on the checked approval, either free or reduced, the assessment is calculated as in B and D.

86.3. Copies of the Form WVDE 43-10-13-ME will be left with an On-Site Visit and Corrective Action form. For applications with Error Code G the school is allowed ten working days to complete or correct the application before an assessment is made.

#### **§126-85-87. Assessment Procedure Meal Components and Quantities.**

87.1. During the On-Site Visit, the WVDE coordinator will determine if the meal served on the day of the review contains the components and quantities to meet meal pattern requirements. If the components and/or quantities are inadequate to meet USDA requirements, an assessment may be made for all reimbursement for that day's meal. If the school has a choice of menus and only one menu is inadequate in components and/or quantities, the Section 4 (total meals) reimbursement can be assessed, or a percentage of meals served may be assessed.

87.2. In schools with two serving lines, the line serving the menu choice with inadequate components and/or quantities is assessed.

87.3. When conducting an On-Site Visit menus may be examined using the production records. Meals determined to contain insufficient components in required quantities shall be found out of compliance.

#### **§126-85-88. Adjustments/Repayment of Funds.**

88.1. There are several situations that arise requiring a SFA or school to repay funds to WVDE or claim additional funds due the SFA. The following methods shall be used for repayment.

88.1.1. When the situation requiring repayment occurs during the current federal fiscal year (October 1 to September 30), the amount owed will be deducted from a future claim by the WVDE finance office.

88.1.2. If the situation requiring overpayment occurs during the previous federal fiscal year, the amount must be repaid by check to WVDE within 60 days of the finding. (For example, if an error occurs on the September claim, a check must be written to WVDE.)

88.1.3. There are situations that require both methods of repayment. (For example, during a review in December an error in application approval is found. The overclaim for meals claimed for ineligible children during September would be repaid by check (written to WVDE) while meals incorrectly claimed in October and November would be deducted from a future claim for reimbursement.)

88.1.4. All monies owed to WVDE must be repaid within 60 days of notification of the debt. After the 60 day period, SFA reimbursement will be delayed until the funds are received.

88.2. If during a review by the WVDE an underclaim for reimbursement of meals is found the SFA or school shall submit a revised claim to the WVDE. Adjustments will be made upon receipt of the revised claim.

#### **§126-85-89. Auditing.**

89.1. The Office of Management and Budget (OMB) Circular A-128 establishes uniform audit requirements for state and local governments, or their subdivisions, that receive Federal financial assistance. The Circular requires recipients and subrecipients of Federal financial assistance to arrange for independent audits of financial operations, including compliance with certain provisions of Federal laws and regulations, and to assure that single audits are made in accordance with Circular A-128.

89.2. The audit of all fiscal accounts will be conducted by auditors from the West Virginia State Tax Commission or an independent firm. In order to meet the program audit requirements as set forth in the USDA Audit Guide for school programs, the West Virginia State Tax Commission Office will, upon the completion of the audit of the fiscal accounts, appoint a private auditor or certified public accountant to conduct a program audit for the child nutrition program funds. Each SFA will be charged by the private auditing firm for the child nutrition program portion of the audit. The SFA will be charged a per diem fee and expenses by the West Virginia State Tax Commission for the commission's fiscal portion of the audit.

89.3. The findings or recommendations concerning the child nutrition program audits must be reviewed immediately by the WVDE. Notice of audit findings and recommendations shall be forwarded to the SFA within ten days. WVDE shall work toward resolution of the findings within 90 days.

89.4. Child Nutrition Program Audit Requirements.

Sponsor Type	Annual Amount of Total Federal Funding Received	National School Lunch Program, School Breakfast Program, Summer Food Service Program, Special Milk Program
Governmental-OMB A-128 (Includes Public Schools)	Under \$25,000	None
	\$25,000 - \$100,000	Organization-wide or Program Annually
	Over \$100,000	Organization-wide Annually
Non-Governmental-OMB A - 133	Annual amount of total federal funding expended Under \$100,000	None
	Over \$100,000	Organization-wide or Program Annually or Biennially

**§126-85-90. Coordinated Review Effort (CRE).**

90.1. CRE is a two part review process that 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. SFAs are reviewed once every five year cycle.

**§126-85-91. School Selection Procedures.**

91.1. All schools, with the exception of Residential Child Care Institutions, with a free average daily participation of 100 or more and a free participation factor of 100

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percent or more must be reviewed. Selection of additional schools to meet the minimum number of schools to review must be based on the following criteria:

91.1.1. Elementary schools with a free Average Daily Participation (ADP) of 100 or more and percent free participation of 97% or more;

91.1.2. Combination schools with a free ADP of 100 or more and a percent free participation of 87% or more; and

91.1.3. Secondary schools with a free ADP of 100 or more and a percent free participation of 77% or more.

91.2. When the number of schools selected using the criteria described above does not meet the required number of schools to review, the WVDE must select additional schools using the following criteria:

91.2.1. low participation schools;

91.2.2. recommendations from a food service director;

91.2.3. findings from the on-site visits or the claims review process;

91.2.4. any school in which the daily lunch counts appear questionable;

91.2.5. identical or similar claiming patterns;

91.2.6. large changes in the free lunch counts;

91.2.7. new manager or school/manager never reviewed by State;

91.2.8. new or unusual accountability system;

91.2.9. proportional mix of the different counting systems employed by the SFA; and/or

91.2.10. schools that have less than 100 free ADP but greater than 100 percent free participation.

91.3. When selecting schools for administrative review, the WVDE must use the required procedures and criteria. The selection may occur prior to the review date or may occur at the time of the review. The table below is used to determine the minimum number of schools to review.

Number of Schools in the School Food Authority	Minimum Number of Schools to Review	Number of Schools in the School Food Authority	Minimum Number of Schools to Review
1 to 5	1	41 to 60	6
6 to 10	2	61 to 80	8
11 to 20	3	81 to 100	10
21 to 40	4	101 to More	12*

\* 12 plus 5 percent of the number of schools over 100. Fractions must be rounded up to the nearest whole number.

**§126-85-92. Coordinated Review Effort (CRE) Areas.**

92.1. The CRE critical areas include performance standards 1 and 2. The two performance standards are designed to address accountability and nutritional integrity of child nutrition programs as identified by existing management and monitoring tools available to the USDA.

92.2. Critical areas.

92.2.1. Performance Standard 1 includes: eligibility certification, benefit issuance, updating eligibility, counting, and claiming and lunch counts combined and recorded correctly.

92.2.2. Performance Standard 2 includes: Availability of meal components to all students and verification that all observed lunches claimed for reimbursement contain the required number of food items.

92.3. General areas.

92.3.1. The CRE review includes additional areas of program operations that are important for program accountability. These are: free and reduced price process, meal patterns, civil rights, monitoring responsibilities and reporting and recordkeeping.

**§126-85-93. West Virginia Department of Education Addendum.**

93.1. General areas - school. General areas reviewed at the school level include: point of service meal counts, internal control, cash management, meal quality, school environment, and *Standards for School Nutrition*, Policy 4321.1, §126-86.

93.2. General areas - School Food Authority. General areas reviewed at the SFA level include: system for consolidating the claim for reimbursement, financial management of food service funds, direct certification of free/reduced price meal applications (if applicable), food service management company contract (if applicable), procurement procedures and Policy 4321.1, *Standards for School Nutrition*, at §126-86-10. *Comprehensive County Plan To Address Health And Nutrition Re-Education*.

93.3. Other areas - School Food Authority. Other areas reviewed at the SFA level include: adult meal pricing, accruing program interest, program versus non-program adults, invoice distribution, administrative salaries, decentralized net cash balance, recent audit and annual report.

**§126-85-94. Corrective Action.**

94.1. Corrective action is taken for any non-compliance noted in CRE critical or general areas, and/or the WVDE review areas.

94.2. Actions taken to correct a non-compliance must be documented by the SFA and reviewed by the WVDE. Documented corrective action may be submitted at the time of the review or sent to the WVDE certifying that the corrective action required for each non-compliance has been corrected along with notification of dates completed.

94.3. Documented corrective action must be postmarked or submitted to the WVDE no later than 30 days after the established deadline(s) for completion of each required corrective action, or as otherwise extended by the WVDE.

94.4. Problems identified must be corrected system-wide. Effective corrective action must be taken by the SFA in all schools and programs, not just those reviewed.

**§126-85-95. Fiscal Action.**

95.1. Fiscal action must be taken for any non-compliance of CRE Critical Areas of review. Fiscal action may be taken for findings in the General Areas of review or reimbursement payments may be withheld.

95.2. Fiscal action is calculated after the SFA's documented corrective action has been reviewed by the WVDE. If a SFA fails to submit adequate corrective action by the due date (30 days), the WVDE may calculate fiscal action through the last serving day of the school year.

**§126-85-96. Overclaim Disregard.**

96.1. The WVDE may disregard a Coordinated Review overclaim if the total School Food Authority overclaim from an administrative review and all subsequent follow-up reviews does not exceed \$600.00 per program (National School Lunch Program, School Breakfast Program, Special Milk Program). However, no overclaim is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

**§126.85.97. Follow-up Reviews.**

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

97.2. The follow-up review must determine that effective corrective action has been implemented for any non-compliance under either the critical or general areas of review. At the time of the follow-up review, at a minimum:

97.2.1. review those aspects of the critical areas that contributed to the review threshold(s) being exceeded;

97.2.2. determine whether corrective actions were satisfactorily completed within the time frames established by the WVDE;

97.2.3. evaluate whether corrective actions resolved the problem(s) system-wide; and

97.2.4. review those aspects of the critical areas that contributed to the review threshold(s) being exceeded in any other program operated by the SFA, i.e., the School Breakfast Program, Special Milk Program and/or after school care programs offering meal supplements. If the administrative review included those other programs and found their operations to be satisfactory, they need not be reviewed during the follow-up review.

97.3. The follow-up review is not intended to address areas that were previously deemed adequate. The basic premise in following up on the non-compliance identified is to focus on the specific finding(s) and determine if the system(s) is adequate. To

accomplish this, the scope of the review activity will vary depending on the problem(s) identified.

97.4. If the review threshold non-compliance(s) is limited to the school food authority level (e.g., centralized eligibility certification and/or benefit issuance process, school food authority claim consolidation, or centralized kitchen errors), the follow-up review activity may be limited to the school food authority level.

97.5. If the review threshold non-compliance(s) was identified at the school level, at least the minimum number of schools required in the following table must be reviewed.

Number of Schools in the School Food Authority	Minimum Number of Schools to Review	Number of Schools in the School Food Authority	Minimum Number of Schools to Review
1 to 5	1	41 to 60	6
6 to 10	2	61 to 80	8
11 to 20	3	81 to 100	10
21 to 40	4	101 to More	12*

\* 12 plus 5 percent of the number of schools over 100. Fractions must be rounded up to the nearest whole number.

**§126-85-98. School Food Authority (SFA) Fiscal Action Appeal.**

98.1. 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 CRE.

**§126-85-99. Coordinated Review Effort (CRE) Procedures.**

99.1. Critical.

99.1.1. To be in compliance with CRE's critical review areas, SFAs 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; and record, consolidate and report lunch counts on the claim for reimbursement correctly.

99.2. General.

99.2.1. To be in compliance with CRE's general review areas, SFAs 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 WVDE by January 10; serve lunches that provide the required quantities of food; ensure that no child is denied benefits or discriminated against because of race, color, national origin, age, gender or disability; ensure that on-site reviews of each school's meal counting system are conducted and documented by February 1; check each school's meal counts before submitting the claim for reimbursement to the WVDE; and submit reports and keep records as required.

**§126-85-100. Civil Rights.**

100.1. It is the School Food Authority's responsibility to train and monitor their schools in regard to Civil Rights compliance.

100.2. Sponsors must ensure that all forms of communication and printed program information that are disseminated, especially the free and reduced price notification letters, application forms and public releases, include the following elements:

100.2.1. The statement that program benefits and services are available to all children without regard to race, color, gender, disability, age or national origin; and

100.2.2. The procedure for filing a complaint. Participants who feel they have been discriminated against should write to the Administrator, Food and Nutrition Service, USDA, Park Office Center, Alexandria, Virginia 22302.

100.3. Parents or guardians of students in schools participating in the school nutrition programs, and local minority and grassroots organizations should be informed of the availability of program benefits and services, the nondiscrimination policy and all significant changes in existing requirements that pertain to program eligibility and benefits.

100.4. A USDA nondiscrimination poster must be displayed in the food service/dining area. (Posters are available at the WVDE.)

100.5. The sponsor is to make available to the public and to participants and potential participants upon request, information about program requirements and the procedures for filing a complaint in English and/or in the appropriate translation to non-English speaking persons.

**§126-85-101. Data Collection.**

101.1. USDA requires each school to keep on file the number of enrolled students by race, the number approved for free and reduced priced meals, and the number denied.

101.2. This information is to be collected and on file in the school office by October 31 of each year.

101.3. The racial/ethnic categories for which this information must be collected are: American Indian or Alaskan native; Asian or Pacific Islander; Black (not of Hispanic origin); Hispanic; and White.

101.4. In the event that a household does not complete the voluntary self-determination on the free and reduced price meal application form, this information must be obtained by other methods. Other methods may include determination of the information by a school official through observation or personal knowledge. This information must be:

101.4.1. Maintained on file for three years plus the current year; and

101.4.2. Procedures should be established to ensure that the information is made available only to authorized state and federal personnel during reviews or as part of Office of Management and Budget approved surveys.

**§126-85-102. Review of Schools.**

102.1. When a review of a school is performed, the following information is to be reviewed:

102.1.1. Approved and denied free and reduced price applications are maintained on file.

102.1.2. Whether denied free and reduced price applications are disproportionately composed of minority applications.

102.1.3. Whether there is a need for bilingual material or staff and how, if it exists, it can be addressed.

102.1.4. Procedures that are used to determine and process civil rights complaints.

102.1.5. Whether admission procedures restrict enrollment by minority persons.

102.1.6. USDA or a FCS approved poster is displayed.

102.1.7. Free and reduced price applications and letters provided to parents or guardians of participants and potential participants contain the nondiscrimination statement.

### **§126-85-103. Procedure for Filing complaints.**

103.1. Right to File a Complaint - Any person alleging discrimination based on race, color, national origin, gender, age or disability has a right to file a complaint within 180 days of the alleged discriminatory action. Under special circumstances this time limit may be extended by the Office of Minority Affairs.

103.2. Acceptance - All complaints, written or verbal, shall be accepted by the designated person at the school and the SFA and then forwarded to the Department of Education. It is necessary that the information be sufficient to determine the identity of the agency or individual toward which the complaint is directed, and to indicate the possibility of a violation. Anonymous complaints shall be handled as any other complaint.

103.3. Verbal Complaints - In the event that a complainant makes the allegation verbally or through a telephone conversation and refuses or is not inclined to place such allegations in writing, the person to whom the allegations are made shall write up the elements of the complaint for the complainant. Every effort should be made to have the complainant provide the following information:

103.3.1. Name, address and telephone number or other means of contacting the complainant.

103.3.2. The specific location and name of the entity delivering the program service or benefit.

103.3.3. The nature of the incident(s) or action(s) that led the complainant to feel discrimination was a factor.

103.3.4. The basis on which the complainant believes discrimination exists (race, color, national origin, gender, age or disability).

103.3.5. The names, titles and addresses of persons who may have knowledge of the discriminatory action(s).

103.3.6. The date(s) during which the alleged discriminatory action occurred, or if continuing, the duration of such actions.

**§126-85-104. Civil Rights Definitions.**

104.1. Grassroots Organization - Any organization at the local level that interacts with potential participants, such as a community program, civic organization, migrant group, church, neighborhood council, local chapter of the National Association for the Advancement of Colored People or other similar groups.

104.2. Minority - A person or group of persons belonging to the protected classes covered by Title VI of the Civil Rights Act of 1964, as amended, and later specified by the Office of Management and Budget (OMB) as: American Indian or Alaskan Native, Asian or Pacific Islander, Black (not of Hispanic Origin) or Hispanic.

104.3. Racial/Ethnic Categories - The designation of participants/potential participants by race, color or national origin from the collection and reporting of racial/ethnic data as follows:

104.3.1. American Indian or Alaskan Native - A person having origins in the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

104.3.2. Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

104.3.3. Black (not of Hispanic Origin) - A person having origins in any of the black racial groups of Africa.

104.3.4. Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origins, regardless of race.

104.4. Complaint - A verbal or written allegation of discrimination that indicates that any National School Lunch Program, School Breakfast Program or Special Milk Program is administered or operated in such a manner that it results in disparity of treatment, benefits or services being provided to a child or group of children because of their race, color, national origin, gender, age or disability.

**§126-85-105. Meal Service.**

105.1. Not less than three hours nor more than four and one-half hours should elapse between the service of the school breakfast and the school lunch. A minimum of ten minutes of eating time (after going through the serving line) is to be provided for the school breakfast and a minimum of twenty minutes eating time (after going through the serving line) for the school lunch.

105.2. All foods available at the meal period are to be a part of the menu and be included in the regular meal price. If food is available, second servings may be offered at no charge after the student has eaten the major portion of the meal. Adults shall not remove food from students trays for the consumption of any other person.

105.3. If "super meals" or choice of milk (i.e. milk shakes) are offered, the student who is eligible for free meals must be offered the same service as the paying student at no cost and the student eligible for reduced price meals must be offered the same service at no additional cost.

105.4. Second meals consumed by students shall be reported as non-reimbursable and recorded in column 11 on form WVDE 43-10-30S.

**§126-85-106. Meal Service to Adults.**

106.1. Adults shall be served the same menu served to students in portions not to exceed that of secondary students. No special foods shall be prepared for adults. Sale of a la carte items to adults is not permitted, except those items available to students for breakfast a la cart sales. Adult meals are not reimbursable.

106.2. Meals served to adults who are directly involved in the operation and administration of child nutrition programs may, at the discretion of the SFA, be furnished at no charge. These meals should be shown as program adult meals (Column 6 or 12 on form 43-10-30S). School employees who supervise during the lunch or breakfast periods, sell tickets or perform other duties directly related to the food program should do so on a contract basis as described in W.Va. Code §§18A-4-14 and 16.

106.3. Meals served to adults not directly involved in the child nutrition program such as administrators, teachers, aides, student teachers and other persons working or visiting in the school may not be served free of charge unless the cost of the meal is covered from another source. These meals must be reported as non-program adult meals (Column 5 or 11 on form 43-10-30S).

**§126-85-107. Meal Service for Children with a Disability and Students with Special Dietary Needs.**

107.1. Schools shall make substitutions in foods for students with a disability under 7 CFR Part 15(b) and whose disability restricts their diet. Schools may make substitutions in foods for nondisabled students who are unable to consume the regular lunch because of medical or other special dietary needs.

107.2. These meals/substitutions must be provided at no additional charge or free or reduced to those with free and/or approved reduced price applications on file. Special equipment for preparation and utensils for eating are allowable costs.

107.3. Schools shall require parents/guardians of children with or without a disability who have need of special meals to provide medical certification that 1) verifies special meals are needed because of the child's disability or medical condition and 2) prescribes the alternate foods and forms of foods needed to meet the child's special dietary needs. Substitutions shall be made on a case-by-case basis. Such statement shall, in the case of a student with a disability, be signed by a physician or, in the case of a student without a disability, by a recognized medical authority. The statement must be updated each school year.

107.4. The *Standards for School Nutrition*, Policy 4321.1, requires additional foods be provided for pregnant and lactating students as specified in Section 4.1 Lunch Implementation Option A. When breakfast and lunch are considered together or in combination with a snack, the school shall provide:

107.4.1. a total of 5 oz. of protein foods, 1 oz. of which shall be 1 oz. cheese, 1 cup yogurt or 8 oz. fluid milk;

107.4.2. 3 servings from the grain group, preferably from whole grains;

107.4.3. 1 - 1/4 cups from the fruit and vegetable group; and

107.4.4. 16 oz. from the milk group.

107.5. In these additional foods the following option shall be allowed:

107.5.1. 1 cup of fruit in place of one serving of the grain group once a week.

**§126-85-108. Disciplinary Practices and Meal Service.**

108.1. In no case shall a student be denied a meal or part of a meal or served a different type of meal as a means of discipline or as a result of discipline for violation of school policies.

108.2. In schools where "offer vs. serve" is practiced or where choices of menus or menu items are offered, the student being disciplined and/or the student in detention hall must have the identical type meal service available to other students.

**§126-85-109. Senior Citizens.**

109.1. Schools are encouraged to initiate and cooperate with programs to provide meals for senior citizens. Payment of the adult meal rate must be made either by the individual receiving the meal or by partial or no payment by the recipient with the remainder paid by another agency.

**§126-85-110. Emergency Food Service.**

110.1. If school food service facilities are needed in emergency situations, supplies and foods on hand (both purchased and donated) may be used for emergency feeding. Accurate inventory records must be maintained and replacement or repayment must be requested from the appropriate disaster relief agency.

**§126-85-111. Charging Meals.**

111.1. In most situations, particularly in the case of elementary and middle schools, provision for charging meals and/or milk on an emergency short-term basis is recommended. The practice of charging meals over long periods of time in lieu of making application for free or reduced price meal service is to be avoided. Schools may develop systems for billing families on a regular basis. However, schools are not required to provide meals or milk indefinitely when payment has not been made in the time determined to be reasonable by the local school officials. Schools are encouraged to obtain completed free and/or reduced price meal applications when financial need is obvious.

**§126-85-112. Lost, Stolen and Misused Tickets.**

112.1. Local school officials should develop procedures to handle the problem of lost, stolen and/or misused tickets and should initiate appropriate corrective measures. These officials should distinguish between genuine cases of lost or stolen tickets from willfully fraudulent "sold ticket/misuse" situations, and take appropriate action. This may

include, when necessary, the same disciplinary measures that would be used in resolving any other infraction of school standards and rules of conduct.

112.2. The decision to replace a ticket belongs to the school regardless of the circumstances. The "lost" or "stolen" ticket may be replaced or the school may choose one of several options. The options may include accompanying or monitoring all students who report lost or stolen tickets - needy and non-needy - through the food service line; providing a list of those students' names to the cashier; or any locally developed measure that complies with the legislated boundaries. Regardless of which option is chosen, the eligible needy student must be provided with the free or reduced price meal.

112.3. Schools may also initiate a procedure that would sanction an ineligible student for attempting to use a ticket to obtain a meal when that ticket was lost, stolen or when it was determined that the ticket was otherwise obtained by fraud. In developing corrective measures, schools need only ensure that free and reduced price recipients not be overtly identified and that they not be charged for any replacement ticket.

#### **§126-85-113. Use of Foods, Supplies and Equipment.**

113.1. Left-over foods, USDA donated foods or purchased foods shall not be sold, traded or given away, except as used in child nutrition programs. No food, including left-overs, shall be removed from the school food service area by food service personnel either for their own use or for the use of others, except for school sponsored activities.

113.2. All equipment and supplies shall be properly inventoried and shall not be removed from the school food service area without appropriate authorization. Records must be maintained verifying the date a piece of equipment was loaned from the food service department, the date returned, the principal's signature and the name of the borrower.

113.3. It is recommended that individuals not make purchases from vendors in the schools. If such purchases are made, items delivered may not be stored in the food service equipment. It is also recommended that no personal items be stored in food service equipment or storage areas.

113.4. Food for outside functions (not school sponsored) shall not be prepared in the kitchen during the regular work day. School food service facilities may be used by school or community groups for food service when authorized by the school administrator. Entrepreneurs or school personnel may not use food service facilities for individual benefit. At least one school food service employee shall be in charge to ensure control over the child nutrition program foods and for proper use and care of equipment and facilities.

Wages for the school food service personnel shall be paid by the organization using the facilities in accordance with current wage and hour regulations and SFA policy.

**§126-85-114. Safety and Sanitation.**

114.1. To avoid health and safety hazards, only authorized school food service personnel shall be allowed in the food preparation and serving areas. Use of tobacco shall not be permitted in the school building or on school property.

114.2. It is recommended that food service personnel wear clean uniforms. Approved hair restraints are required.

114.3. Students working in the food service area must wear hair restraints and a smock or full apron. These garments shall be stored in the food service area and shall be laundered or replaced daily.

114.4. To ensure that foods are served at proper temperatures, plates or trays should be filled only as the students pass through the line. In schools, family style is not permitted for students and/or adults, except for Head Start and preschool child care programs.

114.5. Extreme care should be taken during preparation and serving of food to avoid contamination or spread of communicable diseases.

**§126-85-115. Sale of Foods and Beverages.**

115.1. Food or beverage items sold or served during the school day must meet the requirements of *Standards for School Nutrition*, Policy 4321.1, §126-86.

115.2. Milk and bottled water may be sold to a student at any time during the meal period. Proceeds from milk, bottled water or milkshakes sold in the lunchroom at the time of meal service must be deposited to the child nutrition account.

**§126-85-116. Requirements and Accountability for Foods and Beverages Sold/Served.**

116.1. The WVBE has adopted the *Standards for School Nutrition*, Policy 4321.1, which sets requirements for all foods and beverages made available on school premises during the school day. The school day for the purpose of this policy is defined as the time between the arrival of the first child at school and the end of the last scheduled instructional period.

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116.2. Acceptable vended food items may be sold if nutrition validation is on file at the school. Validation may be in the form of a laboratory analysis of a specific item and shall be written on vendor/company letterhead and signed by an authorized company official. If nutrition labels are used as documentation, the SFA must provide access to that information at the time of review (Refer to guidelines for product selection).

116.3. Nutrition policies adopted by WVDE are more restrictive and supersede those of USDA. Schools shall be guided by definitions contained herein rather than information furnished by sales representatives.

116.4. No candy, soft drinks, chewing gum or flavored ice bars will be sold or served except that, county boards may permit the sale of soft drinks in county high schools except during breakfast and lunch periods. The sale of such soft drinks shall be in compliance with the rules of the National School Lunch Program and the School Breakfast Program of the State Board and the nutrition service of the USDA. Seventy-five percent of the profits from the sale of soft drinks shall be allocated by a majority vote of the faculty senate of each school and twenty-five percent of the profits from the sale of soft drinks shall be allocated to the purchases of necessary supplies by the principal of the school. No foods containing 40% or more sugar by weight or juice products containing less than 20% real juice will be sold or served.

116.5. All "other foods" available during the instructional day shall reflect the Dietary Guidelines for fat by limiting the number of fat grams to not more than 8 per one ounce serving, or meet the USDA standard for a meal component. "Other foods" are defined as any food or beverage, other than those served as part of the school meal; including snacks from vending machines, and foods sold during school hours for fund-raising purposes and foods for parties. Other foods do not include those brought to school by individual students for their own consumption.

116.6. After-school programs that provide supplemental meals to children shall comply with standards of the policy.

116.7. County boards of education and local school administrators shall provide a nutritionally healthful school environment for students and accountability for all funds from food and beverage sales. Enforcement systems shall include, but are not limited to:

116.7.1. The Performance Based Accreditation System that includes (a) specified compliance standard(s) and verification procedures.

116.7.2. Monitoring sales and service of "other foods". Sanctions for non-compliance shall include transfer of purchasing authority for food and beverage items from the school to the county level.

**§126-85-117. Foods and Beverages Definitions.**

117.1. The *Standards for School Nutrition*, Policy 4321.1, adopted by the State Board of Education defined the following foods and beverages.

117.1.1. Candy is defined as any food that, as served in its finished form, contains, by weight, 40 percent or more sugar (in crystalline form or in solution as syrup, both monosaccharides and disaccharides) and/or other sweetening agents, or any food product commonly referred to as "candy".

117.1.2. Soft drinks as defined in Section 1, Article 19, Chapter 11 of the West Virginia Code: (a) "Bottled Soft Drinks" which are all beverages, whether carbonated or not, or any preparations commonly referred to as "soft drinks" of whatever kind, which are closed and sealed in glass, paper or any other type of container, envelope, package or bottle, whether manufactured with or without the use of any syrup, and (b) any beverages, whether bottled or not, which are prepared from soft drink syrups and powders by the mixing thereof with carbonated or plain water, ice, fruit, milk or any other product suitable to make a soft drink. Except that flavored, fluid milk, as defined in regulations promulgated by USDA governing Child Nutrition Programs, and beverage mixtures which, in the finished product, contain at least 20 percent natural fruit or vegetable juices may be sold.

117.1.3. Chewing gum is defined as a preparation of chicle or other plastic substance sweetened and/or flavored for chewing.

117.1.4. Flavored ice bar is defined as a frozen confection consisting of water mixed with flavored syrups and/or powders, sugars and/or other sweetening agents, binders, stabilizers and/or emulsifiers.

117.1.5. Other foods are defined as any food or beverage, other than those served as part of the school meal, including snacks from vending machines, and foods sold during school hours for fund-raising purposes and foods for parties. Other foods do not include those brought to school by individual students for their own consumption.

**§126-85-118. Selection of Snack Items.**

118.1. The WVBE mandate on the sales of foods in schools supersedes any USDA regulation. Accurate product information must be on file to determine nutrient content of foods and beverages.

118.2. It is the responsibility of school personnel to control what products are placed in vending machines, school stores and/or snack bars. School personnel should

obtain product analysis information from vendors upon which the decisions are made. These analyses are to be written on vendor/company letterhead and signed by an authorized company official. The criteria for "other" foods that are sold or served during the school day include: have 8 grams or less of fat per one ounce serving, or meet the USDA standard for a meal pattern requirement, and contain less than 40% sugar by weight.

118.3. Standards require that labels on packaged food identify the contents of the product. The total grams of fat per serving noted on the label can be used to determine if a food may be served.

#### **§126-85-119. Guidelines for Selection of Juice or Juice Products.**

119.1. The WVBE Policy 4321.1, *Standards for School Nutrition*, supersedes any USDA regulation. Juice or juice products sold in schools must contain a minimum of 20% real juice. The product must be labeled or the principal must have proof of the percent of juice in each product sold. The proof must be written on company/vendor letterhead and signed by an authorized company official.

#### **§126-85-120. Meals for Secondary Students Attending Colleges.**

120.1. In some cases high school students participate in a special study program at a college. "Take-out" school lunches may be served by their appropriate schools and claimed for reimbursement. The provision of these lunches, however, would be at the option of the SFAs since they are only required to make lunches available to eligible students who are present during the lunch service periods.

120.2. The colleges and universities participating in the special study program are not eligible to participate in the NSLP since they do not meet the definition of "school" under program regulations. Therefore, meals provided to the high school students by the colleges would not be eligible for NSLP reimbursement, even if the high school compensated the college for the cost of the meal.

#### **§126-85-121. Meals for Field Trips.**

121.1. Breakfast and/or lunch meals may be provided and claimed at the eligible rates of reimbursement for students participating in field trips and other off-site functions. The following conditions must be met: the off-site function is an official school-sponsored one, proper measures are taken to avoid food contamination and spoilage, the meals served meet USDA meal pattern requirements and accurate records by category and count are maintained.

**§126-85-122. Personnel and Training.**

122.1. Every employee must be carefully selected for each position. It is advisable to employ trained personnel at both the school and School Food Authority levels.

122.2. Responsibilities and duties of all personnel shall be established by the SFA. Employees develop an understanding of their responsibilities through training and detailed instructions. Motivation will be increased if the employees understand the purposes of the programs and the tasks necessary to achieve those purposes. Duties, salary schedules, sick leave, hours of work, health examinations and fringe benefits such as social security and retirement benefits should be described in a statement of SFA policies and should be available to employees.

122.3. Employment policies are governed by the SFA and must be in agreement with state and federal laws and regulations. W.Va. Code §18A-2-5, requiring written contracts, applies to tenured, probationary and substitute employees. Employees must return signed contracts within thirty days after receipt or they forfeit the right to employment. Many counties use a mutual consent form that is appended to the contract when a change of classification is made or when employees indicate no desire to change classification. Principals should check the SFA to ensure that consistent procedures are being followed.

122.4. In order to maintain a high degree of productivity and performance, school food service personnel must be evaluated periodically. Evaluation policy is determined by the SFA and should be applicable to tenured and non-tenured personnel. Evaluation criteria and instruments shall be developed by the SFA and made available to employees and school principals.

122.5. Each SFA shall maintain a code or standard of conduct that governs the performance of employees. USDA regulations state that school, county, state and federal food service employees shall neither solicit nor accept gratuities, favors or anything of material monetary value from contractors, vendors or potential contractors.

122.6. There are two sections of state law that refer to extra duty assignments. Those occurring on a regularly scheduled basis, as defined in W.Va. Code §18A-4-16, must be covered by a written document. Those defined in W.Va. Code §18A-4-8b not occurring on a regular basis need not be covered by a written document.

122.7. SFAs are required to post and date notices of all job vacancies in a conspicuous working place for a minimum of five days. No vacancy can be filled until after the five days, but such vacancy must be filled within twenty working days from the posting date.

122.8. A vacated position or a newly created position may be filled temporarily with a substitute. State law states that substitute service personnel shall be assigned on the basis of seniority. When filling the position of an absent employee with a substitute, that position shall be offered in the following order:

122.8.1. With a regular employee in the same building having the same classification category (Cook I, Cook II, Cook III, Cafeteria Manager) and the greatest seniority. Such regular employees shall be assigned on a rotating and seniority basis. The person filling an absentee position may be given the opportunity to stay in that position through the absence.

122.8.2. With a substitute with the greatest length of service time. Substitutes shall be employed on a rotating basis, according to their length of service, so that each has an opportunity to perform similar jobs.

122.9. When filling a vacant service personnel position, one must first offer the position to a regular employee within that classification category (i.e., Cook I, Cook II, Cook III, Cafeteria Manager) having the greatest seniority and strongest evaluation. If no one classified as a cook is interested in the position, it may be offered to other service employees based on seniority and contingent upon their passing the competency test for cooks.

122.10 It is recommended that child nutrition program participation data be used to develop a consistent standard for determining the number of employees needed for efficient program operations. Recommended staffing ratios are available in W.Va. Code §8A-2-13.

### **§126-85-123. Classification of Cooks.**

123.1. Classification of cooks, as stated in W.Va. Code §18A-4-8, include:

123.1.1. Cook I. personnel employed as cook's helper.

123.1.2. Cook II. personnel employed to interpret menus, to prepare and serve meals; and personnel who have been employed as "Cook I" for a period of four years, if such personnel have not been elevated to this classification within that period of time.

123.1.3. Cook III. personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and request repairs.

123.1.4. Cafeteria Manager. personnel employed to direct the operation of a food service program in a school, including assigning duties to employees, approving requisitions for supplies, repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

**§126-85-124. Nutrition Education and Training (NET) Program.**

124.1. Nutrition Education and Training (NET) Program funds are made available through a USDA grant award to the WVDE based on an approved plan. Program funds may be used to provide:

124.1.1. nutrition education for children;

124.1.2. training programs for teachers;

124.1.3. training programs for school food service personnel;

124.1.4. nutrition education for parents; and

124.1.5. nutrition materials.

124.2. West Virginia's NET plan provides for a specially trained cadre of educators who conduct professional development and inservice workshops in nutrition education and food service management for teachers, administrators, parents and food service personnel. Persons interested in these services may contact the WVDE, Office of Child Nutrition.

124.3. The NET Program also maintains a lending library of current nutrition and food service educational materials, including books, video tapes and multimedia kits. An annotated bibliography with annual supplements are provided to schools and School Food Authorities. These resources may be requested by calling the Office of Child Nutrition.

**§126-85-125. Training Programs for Food Service Personnel.**

125.1. Enhancing student health and learning through nutrition services requires training in many areas of nutrition, food service and program management. These include: knowledge of current nutrition recommendations, USDA regulations and WVDE policies, including required meal patterns; use of standardized recipes; procurement procedures; operation of institutional food service equipment; use of USDA publications, such as The Buying Guide for Quantity Foods; financial management; and food sanitation and safety.

125.2. WVBE Policy 5500.02, *County Service Personnel Staff Development Councils*, requires at least 18 hours of job-related staff development for service personnel each year. The County Service Personnel Staff Development Council has final authority to propose and evaluate staff development programs according to the rules of the policy.

125.3. The NET Program provides training programs at the SFA level for food service personnel through a cadre of trained educators. SFAs may contact the Office of Child Nutrition staff to schedule training through the NET program.

125.4. In addition to workshops on various nutrition and food service management topics WVDE, through the NET program, makes preservice training available for newly employed cooks and substitutes on a regional basis. However, SFAs may conduct their own fifteen-hour preservice training. It is recommended that preservice training minimally include: use of standardized recipes; USDA meal patterns; use of quantity equipment; food preparation skills; safety; and sanitation.

**§126-85-126. Competency Testing for Food Service Personnel.**

126.1. Effective July 1, 1991, county boards of education shall provide competency tests for all new service personnel applicants in each specific classification title. This applies to applicants for either regular or substitute positions.

126.2. As specified in W.Va. Code §18A-4-8e, these competency tests are intended to determine whether applicants are qualified for a specific classification title. They are not to be used to evaluate employees' skills or performance in their currently held categories.

126.3. For testing purposes, Cooks I, II, III and Cafeteria Manager are included in the same classification category, and applicants for these positions are administered the same test. County food service supervisor applicants are administered a different test.

126.4. All competency tests are developed by the Bureau of Vocational, Technical and Adult Education of the WVDE. Vocational schools serving the local county boards of education administer them.

126.5. After July 1, 1991, only these approved competency tests may be administered by boards of education. Locally developed tests are prohibited under this section of the state code.

**§126-85-127. Integration and Involvement.**

127.1. Providing a school environment that promotes optional growth, health and education for all students requires the active involvement of the total school staff, parents and community members. Child Nutrition Program experience shows the positive effects of a collaborative approach to planning and delivering nutrition services and nutrition education. They include increased public awareness of the value of good nutrition and the role of school nutrition programs in enhancing students' health and learning; increased student acceptance of nutritious foods and dietary changes; and increased participation in school nutrition programs.

127.2. Both federal regulation and State Board policy acknowledge the importance of cooperative planning and involvement. Each recognizes the value of local discretion in determining specific needs and strategies related to school, home and community involvement.

127.3. National School Lunch Program regulations require SFAs to conduct activities that involve students and parents in the school's nutrition programs. SFAs are to maintain documentation of such activities. WVBE Policy 4321.1, *Standards for School Nutrition*, requires a county plan for integrating nutrition services and the curriculum.

**§126-85-128. Comprehensive County Nutrition Plan.**

128.1. To accomplish its goals, school nutrition programs must become an integral part of the total school curriculum. A broad spectrum of school and community representatives need to work collaboratively to create and strengthen the links between nutrition services and the curriculum. WVBE Policy 4321.1, *Standards for School Nutrition*, requires that a comprehensive county plan be developed to address: establishing a wellness environment; providing professional development; and establishing on-going evaluation.

128.2. The plan outlines the county's direction, priorities and activities related to implementing standards set forth in the policy. At the discretion of the county, this plan may include a statement of need; goals, strategies and resources to address identified needs; and evaluation procedures.

128.3. A broad-based committee or advisory council comprised of, but not limited to, health care providers, food service personnel, teachers, students and educational administrators, is responsible for developing the county plan. If the development of the plan can be more effectively accomplished through other county planning activities, such as developing a comprehensive school health program plan, a separate nutrition plan is

not required. However, the development of such a plan must include all participants specified in WVBE Policy 4321.1, *Standards for School Nutrition*.

**§126-85-129. County Nutrition Advisory Council.**

129.1. In order to strengthen school child nutrition programs and to enlist the cooperation of school faculties, students and parents, SFAs may appoint a County Nutrition Advisory Council that includes representatives from the following groups: county administrators, school principals, teachers, health professionals, school food service personnel, lay citizens and students.

129.2. Responsibilities of the County Nutrition Advisory Council may include:

129.2.1. facilitating linkages between nutrition services and the total school environment;

129.2.2. recommending guidelines and policies concerning the sales and service of foods and beverages;

129.2.3. recommending procedures for evaluating the nutritional content of foods and beverages sold in schools;

129.2.4. advising the county food service supervisor concerning the food service provided under the National School Lunch Act and the Child Nutrition Act;

129.2.5. developing the County Nutrition Plan; and

129.2.6. identifying resources for use in promoting and providing quality nutrition services. —

**FISCAL NOTE WORKSHEET**  
(Submit 4 Copies)

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policies of Operation Manual, Child Nutrition Programs (4320) FUND General

SOURCE OF REVENUE:  GENERAL FUND  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

COST OF ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

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

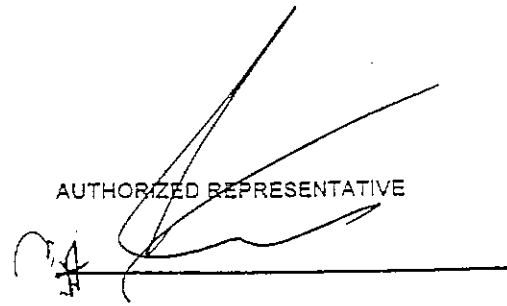
**SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT**

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

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

DATE  
7/18/99

AGENCY  
\_\_\_\_\_  
West Virginia Department of Education

AUTHORIZED REPRESENTATIVE  


KEN HECHLER  
Secretary of State  
MARY P. RATLIFF  
Deputy Secretary of State  
JAN CASTO  
Deputy Secretary of State  
CATHERINE FREROTTE  
Executive Assistant  
Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900



WILLIAM H. HARRINGTON  
Chief of Staff  
JUDY COOPER  
Director, Administrative Law  
PENNEY BARKER  
Supervisor, Corporations

STATE OF WEST VIRGINIA  
SECRETARY OF STATE  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

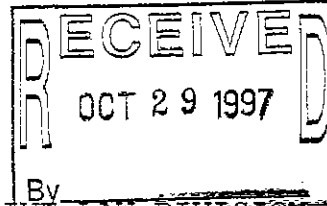
(Plus all the volunteer help we can get)

TO: Harriet Deel  
VILLENITA HARRIS

AGENCY: EDUCATION

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October <sup>29</sup>, 1997



OFFICE OF THE SECRETARY OF STATE

Nov 4 9 02 AM '97

FILED

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 85 TITLE: 126 EDUCATION

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Harriet Deel

TITLE OF PERSON SIGNING: Director, Office of Child Nutrition

DATE: Oct. 31, 1997

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.