

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

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JUL 14 2 57 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

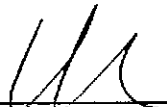
AGENCY: West Virginia Board of Education TITLE NUMBER: 126
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Constitution, Article XII,
§2; W.Va. Code 18-2-5
AMENDMENT TO AN EXISTING RULE: YES NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 86 (Policy 4321.1)
TITLE OF RULE BEING AMENDED: Standards for School Nutrition

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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 15, 1994 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Dr. Harriet Deel, Director
Office of Child Nutrition
W.Va. Department of Education
Building 6, Room 248
1900 Kanawha Boulevard, East
Charleston, WV 25305-0330

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



William J. Luff, Jr.
Associate State Superintendent

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

5-00

FISCAL NOTE WORKSHEET

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

SUBJECT School Nutrition Policy FUND Child Nutrition Funds

SOURCE OF REVENUE: GENERAL SPECIAL OTHER (SPECIFY) Federal USDA funds

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

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

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

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

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

Proposed changes in policy do not reflect any further expenditures.

IMPACTS

FISCAL:

No negative economic impact.
Approval of the recommended revisions will have no negative economic impact; possibly, a slight positive impact. Additionally, reasonable assurances exist that the meals will meet Dietary Guidelines. Revisions will facilitate policy implementation.

STATE STAFF:

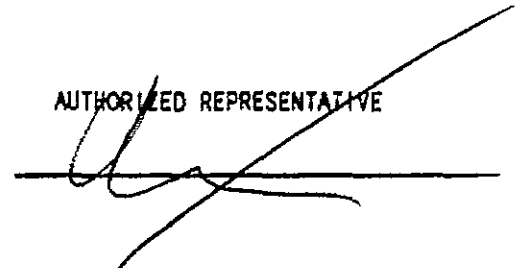
DATE

AGENCY

AUTHORIZED REPRESENTATIVE

7/14/94
1074c/1

West Virginia Dept. of Education



EXECUTIVE SUMMARY
WEST VIRGINIA BOARD OF EDUCATION

PROPOSED REVISION TO STANDARDS FOR SCHOOL NUTRITION
POLICY 4321.1

PUBLIC COMMENT PERIOD ENDS: August 15, 1994 Adopted _____

BACKGROUND:

Revisions of the Standards for School Nutrition are attached. Revisions reflect changes recommended by the Nutrition Advisory Council established by Policy 4321.1, Section 11.

PURPOSE:

The Nutrition Advisory Council is charged with the responsibility of keeping the West Virginia Board of Education apprised of current research findings in nutrition and assessing potential implications of findings for program development and implementation.

The recommended policy revisions reflect technical and editorial changes suggested by the Council. The recommended technical revisions result from a one-year pilot of nutrient standard menu planning using computer analysis of nutrient factors.

CONTENTS:

Recommended revisions include the following:

- 1) Definition of bottled water.
- 2) Nutrient evaluation based upon a period of a "month" rather than a "week".
- 3) Clarification in quantity of dietary fiber.
- 4) Adjustment in requirement for fresh fruit or vegetables.
- 5) Clarification regarding whole grain bread/bread alternates.
- 6) Terminology revision of "meal" to "lunch."
- 7) Terminology revision of "enforcement systems" to "compliance evaluation."

IMPACT:

Approval of the recommended revisions will have no negative economic impact; possibly, a slight positive impact. Additionally, reasonable assurances exist that the meals will meet Dietary Guidelines. Revisions will facilitate policy implementation.

Policy 4321.1: Standards for School Nutrition

The policy reflects standards as defined in the 1990 Dietary Guidelines for Americans that limit average fat, sodium and added sugar levels and increase dietary fiber and complex carbohydrates. The recommended policy revisions reflect technical and editorial changes suggested by the Nutrition Advisory Council. Suggested technical revisions resulted from a one-year pilot of nutrient standard menu planning using computer analysis of nutrient factors.

TITLE 126
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF EDUCATION
CHAPTER 18-2
SERIES 86
POLICY 4321.1

Title: Standards for School Nutrition

SECTION 1. GENERAL

- 1.1 Scope -- This legislative rule establishes nutrition standards for foods served and/or sold to students in schools during the school day. The procedures relate both to nutritional standards of school meals and additional snacks, including foods and beverages sold or served to students.
- 1.2 Authority and Related Code Citation(s) - WV Code 18-2-5 Constitution Article XII, §2.
- 1.3 Filing Date -
- 1.4 Effective Date -
- 1.5 Repeal of Former Rules - None - This is a revision of former rules filed in 1982.

SECTION 2. PURPOSE

- 2.1 Good nutrition enhances learning and the quality of life. This plan reflects an integrated approach to ensuring a school environment that promotes optimal nutrition for students. Successful dietary changes must occur gradually. The intent of the policy is to enable schools to continue to provide students with choices while implementing changes progressively. For this reason, the policy implementation follows a tiered approach with target dates specified for each tier.

SECTION 3. OPERATIONAL DEFINITIONS, FOOD SALES AND SERVICE

- 3.1 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.
- 3.2 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".

West Virginia Department of Education
Nutrition Standards for School Nutrition

- 3.3 Soft drinks as defined in Section 1, Article 19, Chapter 11 of the Code of West Virginia: (a) "Bottled Soft Drinks" that are all beverages, whether carbonated or not, or any preparations commonly referred to as "soft drinks" of whatever kind, that 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, that 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 that, in the finished product, contain at least 20 percent natural fruit or vegetable juices are not considered soft drinks.
- 3.4 Chewing gum is defined as a preparation of chicle or other plastic substance sweetened and/or flavored for chewing.
- 3.5 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.
- 3.6 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.
- 3.7 Enrollment is defined as "head count".
- 3.8 Bottled water is defined as "water, bottled drinking water 100% pure natural spring water containing no additives".

SECTION 4. NUTRITION STANDARDS FOR SCHOOL NUTRITION PROGRAMS

All foods or beverages made available on school premises during the school day must meet the requirements of this policy.

County Boards of Education shall select for each school one of two implementation options for lunch: Option A (4.1), based on existing USDA meal patterns plus nutrient analysis standards; or Option B (4.2), on a WVDE Lunch Meal Pattern standard, following a phase-in approach identified as Tier I, Tier II and Tier III. The Breakfast Meal Pattern proposes a single implementation option (4.3). After-school programs which provide supplemental meals to children shall comply with standards of the policy. The sale or service of foods containing 40% or more added sugar by weight is prohibited (3.2).

No candy, soft drinks, chewing gum or flavored ice bars will be sold or served. No foods or beverages containing 40% or more sugar by weight will be sold or served. Any juice or juice product sold or served must contain a minimum of 20% real juice.

By 1994, 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 lunch component.

West Virginia Department of Education
 Nutrition Standards for School Nutrition

SECTION 4.1 LUNCH IMPLEMENTATION OPTION A

TIER I by 1993	TIER II by 1994	TIER III by 1995
<p>Recommend that school lunches meet existing USDA meal pattern requirements and averaged over a period of one week <u>month</u>, provide:</p> <ul style="list-style-type: none"> ● at least one-third of students' RDAs for calories, protein, calcium, iron, thiamine, vitamins A and C <p style="text-align: center;">and</p> <ul style="list-style-type: none"> ● limited calories from fat (range of 30 to 35 percent) <p style="text-align: center;">and</p> <ul style="list-style-type: none"> ● limited sodium (1100 mgs maximum) <p style="text-align: center;">and</p> <ul style="list-style-type: none"> ● <u>increased at least 6g of naturally occurring dietary fiber (7-10-gms-for older-children)</u> <p style="text-align: center;">and</p> <ul style="list-style-type: none"> ● offer water 	<p>Require that school lunches meet Tier I recommendations</p> <p>Require additional foods be provided to pregnant or lactating students so that breakfast and lunch together, or in combination with a snack, provide:</p> <ul style="list-style-type: none"> ● 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; ● 3 servings from the grain group, preferably from whole grains; ● 1 - 1/4 cups from the fruit and vegetable group; and ● 16 oz. from milk group. <p>In these additional foods, the following option shall be allowed:</p> <p>1) 1 cup of fruit in place of one serving of the grain group once a week.</p>	<p>Same as Tier II, except limit calories from fat to no more than 30%</p>

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SECTION 4.2 LUNCH IMPLEMENTATION OPTION B

COMPONENT	TIER I by 1993		TIER II by 1994***		TIER III by 1995	
	Grades K-3	Grades 4-12	Grades K-3	Grades 4-12	Grades K-3	Grades 4-12
FRUIT OR VEGETABLE** • offer fresh produce whenever possible	1/2 cup (at least 1/4 cup fresh 3 times/week)	3/4 cup (at least 1/4 cup fresh 3 times/week)	3/4 cup (at least 1/4 cup fresh 3 times/week)	3/4 cup (at least 1/4 cup fresh 5 times/week)	1 cup (at least 1/4 cup fresh daily 5 times per week)	1 1/4 cup (at least 1/4 cup fresh daily 5 times per week)
MEAT/MEAT ALTERNATE • emphasize lean and lower sodium choices • serve dried beans, dried peas or lentils as meat/meat alternate choice at least once/week	1 1/2 oz. (at least 1/4 cup dried beans, dried peas or lentils/week = 1/2 oz. M/MA)	2 oz. (at least 1/4 cup dried beans, dried peas or lentils/week = 1/2 oz. M/MA)	1 1/2 oz. (at least 1/2 cup dried beans, dried peas or lentils/week)	2 oz. (at least 1/2 cup dried beans, dried peas or lentils/week)	1 1/2 oz. (at least 1/2 cup dried beans, dried peas or lentils/week)	2 oz. (at least 1/2 cup dried beans, dried peas or lentils/week)
BREAD/BREAD ALTERNATE ** • emphasize whole grain products	2/day or 10/week (at least 3 servings/week are whole grain or all B/BAs contain at least 25% whole grain)	2/day or 10/week (at least 3 servings/week are whole grain or all B/BAs contain at least 25% whole grain)	2 1.5/day or 12 10/week (at least 5 servings/week are all-whole grain-or all-B-BAs contain at least 33% whole grain)	2 1.5/day or 12/week (at least 5 servings/week are all-whole grain-or all-B-BAs contain at least 33% whole grain)	2 1.5/day or 12 10/week at least 1 5 servings/day week 1-5 whole grain or all-B-BAs contain at least 33% whole grain)	2 1.5/day or 12 week (at least 1 5 servings/day week 1-5 whole grain or all-B-BAs contain at least 33% whole grain)
MILK • offer lower fat choices	8 fl. oz.	8 fl. oz.	8 fl. oz. 1 *offer only milk with 2% or less butterfat	8 fl. oz. 1 *offer only milk with 2% or less butterfat	8 fl. oz. 1 *offer only milk with 2% or less butterfat	8 fl. oz. 1 *offer only milk with 2% or less butterfat
WATER • Encourage adequate water consumption	offer water	offer water	offer water	offer water	offer water	offer water

* Requires prior approval from USDA
 ** Snack Option may be chosen (see 7.1).
 ***Require additional foods for pregnant and lactating students as specified in "Lunch Implementation Option A"

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SECTION 4.3 BREAKFAST IMPLEMENTATION OPTION

COMPONENT	TIER I by 1993 Grades K-12	TIER II by 1994*** Grades K-12	TIER III by 1995 Grades K-12
MILK • offer lower fat choices	8 fl. oz.	8 fl. oz. *offer only milk with 2% or less butterfat	8 fl. oz. *offer only milk with 2% or less butterfat
FRUIT/VEGETABLE** • offer daily a fruit, juice or vegetable that is a good source of vitamin C	1/2 cup	1/2 cup	1/2 cup
MAY CHOOSE ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS OR TWO SERVICINGS FROM ONE			
BREAD/BREAD ALTERNATE** • offer whole grain varieties often	1 or 2 servings	1 or 2 servings	1 or 2 servings
MEAT/MEAT ALTERNATE • encourage low-fat and low-salt choices	1 serving recommended	1 serving recommended	1 serving recommended

* Requires prior approval from USDA
 ** Snack Option may be chosen (see 7.1).
 ***Require additional foods for pregnant and lactating students as specified in "Lunch Implementation Option A"

West Virginia Department of Education
Nutrition Standards for School Nutrition Programs

SECTION 4.4 NUTRITION STANDARDS FOR OTHER FOODS CONSUMED AT SCHOOL

TIER I by 1993 Grades K - 12	TIER II by 1994 Grades K-12	TIER III by 1995 Grades K-12
<p>Develop or expand meal service options to improve accessibility of school meals and acceptability of school meals for all students.</p> <p>Recommend that all "other foods" available during the school day reflect the Dietary Guide--lines 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 <u>lunch</u> component.</p> <p>No candy, soft drinks, chewing gum or flavored ice bars will be sold or served. No foods or beverages containing 40% or more sugar by weight will be sold or served. Any juice or juice product sold or served must contain a minimum of 20% real juice.</p>	<p>Tier I Standards</p> <p>Continue meal service options to ensure accessibility of school meals and acceptability of school meals for all students.</p> <p>Require that all "other foods" available during the instructional day reflect the Dietary Guide--lines 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 <u>lunch</u> component.</p>	<p>Tier II Standards Continued</p>

SECTION 5. A LA CARTE SALES

Only meal components may be sold as a la carte items for breakfast, and only fluid milk, and milkshakes and bottled water may be sold as a la carte items for lunch.

SECTION 6. AVAILABILITY OF DRINKING WATER

All student dining facilities shall contain a drinking water receptacle, or water shall be offered with meals for student consumption.

SECTION 7. ADEQUATE TIME FOR MEAL CONSUMPTION

Adequate time shall be allowed for student meal consumption. Minimum time allowance (eating time for each student after being served the meal) for student consumption of meals shall be ten minutes for breakfast and twenty minutes for lunch.

7.1 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:*

- 7.1.1 The snack is offered as a separate item at breakfast or lunch for consumption later.
- 7.1.2 The snack item may be a single serving of bread/bread alternate, fruit or vegetable.
- 7.1.3 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.
- 7.1.4 Timing of the snack should be determined by individual school choosing this option.
- 7.1.5 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.)
- 7.1.6 Schools choosing this snack option may elect to sell the same snack foods to students who do not purchase a school meal.

* Prior USDA approval is required to provide the fruit/vegetable snack option for lunch in Tiers II and III.

SECTION 8. COMPLIANCE/ACCOUNTABILITY

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~~ Compliance evaluation shall include, but are is not limited to:

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Nutrition Standards for School Nutrition

- 8.1 The Performance Based Accreditation System that includes (a) specified compliance standard(s) and verification procedures.
- 8.2 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.

SECTION 9. STAFFING

Since the availability of a full-time nutrition director at the county level is desirable for centralizing operations, developing and monitoring compliance with specification for foods, especially entrees, implementing the Dietary Guidelines, local district accountability, and for nutrition education and training, it is recommended that each county assign a qualified full-time nutrition director by 1993-94.

Suggested staffing shall be determined by tier level in implementation of Dietary Guidelines, i.e., Tier I, Tier II, or Tier III.

9.1 Tier I suggested staffing:

- 9.1.1 One full-time qualified county director of nutrition services, and
- 9.1.2 one secretary for food services at county level with a minimum of 220 days employment.

9.2 Tiers II and III suggested staffing:

- 9.2.1 one full-time qualified county director of nutrition;
- 9.2.2 one assistant nutrition services director for each county where enrollment exceeds 10,000 students; and
- 9.2.3 two secretaries or one secretary and one clerk for food service operations at the county level where enrollment exceeds 10,000 students.

9.3 Operational Definitions Relative To Staffing

- 9.3.1 Full-time is defined to mean a minimum of 220 days employment with exclusive nutrition program responsibilities.
- 9.3.2 A qualified county director of nutrition shall have a minimum of a baccalaureate degree in professional education or in home economics, nutrition, dietetics, or equivalent experience, and shall have experience in food service management, business management, classroom teaching in nutrition, or experience as a member of the NET cadre. In counties where a full-time food service supervisor, coordinator or director has been employed before July, 1992, and whose job responsibilities have been as listed above, that person shall be considered qualified as long as the person remains in the present position.

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SECTION 10. COMPREHENSIVE COUNTY PLAN TO ADDRESS HEALTH AND NUTRITION RE-EDUCATION

A comprehensive county plan shall be developed with the purpose of linking nutrition service and curriculum by establishing a wellness environment in schools, providing professional development and establishing an on-going evaluation process.

Development of the plan shall involve a broad spectrum of the school and community including health care providers, food service personnel, teachers, students and educational administrators.

SECTION 11. NUTRITION ADVISORY COUNCIL

A broad-based Nutrition Advisory Council shall be established by the West Virginia Department of Education for the purposes of keeping the West Virginia Board of Education apprised of current research findings in nutrition and assessing potential implications of findings for program development and implementation.

SECTION 12. EVALUATION COMPONENT

An evaluation/assessment component shall be established by the West Virginia Department of Education for the purpose of determining the effectiveness of this policy.

COMMENT LOG
Proposed Revisions
Standards for School Nutrition
Policy 4321.1

Directions: Please use this form in commenting by section on the proposed policy revisions.

NAME OF INDIVIDUAL/ORGANIZATION _____

ADDRESS _____

Policy Sections	C O M M E N T S
Section 3.8 Operational Definitions, Bottled Water	
Section 4 Nutrition Standards for School Nutrition Programs	
Section 4.1 Lunch Implementation Option A	
Section 4.2 Lunch Implementation Option B	

Section 5 A La Carte Sales

Section 8 Policies Compliance

SUBMIT COMMENTS BY AUGUST 10, 1994 TO:

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