



Wyoming Department of Education

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MEMORANDUM NO. 2008 – 108

TO: School District Superintendents

FROM: Mary Kay Hill, Director
Administration Unit 

DATE: August 15, 2008

SUBJECT: Chapter 4 Emergency Rules – Food Service Operations

FOR YOUR INFORMATION

Please find enclosed emergency rules and signed certification pages for Chapter 4, Emergency Rules for Food Service Operations. Emergency rules expire in 120 days (November 22, 2008) and will be replaced by permanent rules upon completion of the rulemaking process.

If you have any questions or need more information, please contact Jennifer Duncan at (307) 777-6213. Thank you.

MKH: jd

Enclosure

CERTIFICATION PAGE FOR EMERGENCY RULES

Note: Emergency Rules are in effect for no longer than 120 days

Adoption Date: August 4, 2008

GENERAL INFORMATION:

1 Agency: Wyoming Department of Education
Address: Hathaway Building, 2nd Floor, Cheyenne, WY 82002
Agency Contact Person for these Rules: Jennifer Duncan
Work Telephone: 777-6213

2. Are these new rules? Yes

3. Chapter number and name of rules being created: Chapter 4, Emergency Rules for Food Service Operations

4. Concise statement of emergency requiring promulgation of these rules without notice or opportunity for hearing: The Wyoming Department of Education is required by 2008 Wyoming Session Laws, Chapter 95, Sections 601 through 603 (Senate Enrolled Act 70) to promulgate rules and regulations governing the Food Service Operations in districts and to provide financial assistance to districts operating food service programs having deficit balances. The legislation gave the specific deadline of October 15, 2008 for the payment of funds. The legislation also required that the Department promulgate rules mandating an annual report from districts along with an application process for those funds. In order to complete those tasks, the Chapter 4 rules need to be amended to cover the legislative mandate. These rules are new because they are based on new legislation. However, Chapter 4, which dealt with the acquisition of a Food Service Management Company by districts, is no longer valid because of new federal regulations dealing with the same issue. These rules would replace the outdated language. It is the Department's intention to adopt permanent rules in the future.

FILING WITH LSO:

5. In accordance with W.S. 16-3-104(b)(ii) a copy of these rules were filed with the Legislative Service Office on: August 4, 2008

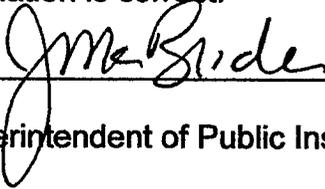
FILING FINAL RULES WITH SECRETARY OF STATE:

6. Yes X No A disk with an exact copy of the attached rules is attached or an electronic mail including the copy of the rules was sent on August 4, 2008

CERTIFICATION BY AGENCY:

The undersigned certifies that the foregoing information is correct.

Date: August 4, 2008



State Superintendent of Public Instruction

GOVERNOR'S CERTIFICATION:

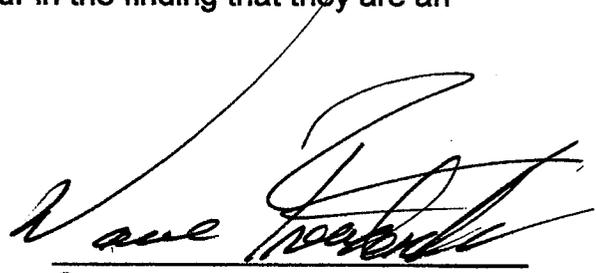
I have reviewed these rules and determined that they:

- 1.) Are within the scope of the statutory authority delegated to the adopting agency;
- 2.) Appear to be within the scope of the legislative purpose of the statutory authority; and
- 3.) Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

8/5/08

Date



Governor

STATE OF WYOMING }

Office of the Secretary

Filed the 10th day of August

2008 at 9:00 A.M.

Max Maxfield
Secretary of State

STATEMENT OF REASONS FOR CHAPTER 4 EMERGENCY RULE

The Wyoming Department of Education is required by 2008 Wyoming Session Laws, Chapter 95, Sections 601 through 603 (Senate Enrolled Act 70) to promulgate rules and regulations governing the Food Service Operations in districts and to provide financial assistance to districts operating food service programs having deficit balances. The legislation gave the specific deadline of October 15, 2008 for the payment of funds. The legislation also required that the Department promulgate rules mandating an annual report from districts along with an application process for those funds. In order to complete those tasks, the Chapter 4 rules need to be amended to cover the legislative mandate. These rules are new because they are based on new legislation. However, Chapter 4, which dealt with the acquisition of a Food Service Management Company by districts, is no longer valid because of new federal regulations dealing with the same issue. These rules would replace the outdated language. It is the Department's intention to adopt permanent rules in the future.

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Food Service Operations
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CHAPTER 4

Food Service Operations

Section 1. **Authority.** These rules are promulgated pursuant to 2008 Wyoming Session Laws, Chapter 95, Section 602 (Senate Enrolled Act 70).

Section 2. **Applicability.** These rules pertain to criteria and standards for determining eligible food service costs, operational standards and food service financial assistance beginning school year 2008-09 and for each year thereafter in which funds are appropriated by the legislature for this program. These rules also provide annual food service reporting requirements.

Section 3. **Promulgation, Amendment or Repeal of Rules.** These rules and any amendments shall become effective as provided by the Wyoming Administrative Procedure Act (W.S. 16-3-101 through 16-3-115) and when signed by the Governor and filed with the Secretary of State's Office.

Section 4. **Definitions.**

(a) **Average statewide meal rate.** The average rate of meal prices for paid students, by grade level, based on the meal prices reported annually to the Department as of September 1 each year.

(b) **Benefits.** Amounts paid by the school district on behalf of food service employees including, but not limited to, the employer's share of insurance, retirement programs, social security programs and workmen's compensation programs.

(c) **Cash Balance.** The beginning cash balance in the food service fund plus cash receipts minus cash disbursements.

(d) **Clerical Support.** Office work performed for the food service operations.

(e) **Code of Conduct Policy.** A policy identifying the ethical standards district personnel are required to adhere to in any situations affecting the purchase of goods and services for the district.

(f) **Contract Services.** Services provided by persons, companies or agencies for food service operations for which a contract has been implemented following applicable procurement requirements.

(g) **Department.** The Wyoming Department of Education as established by W.S. 21-2-104.

(h) **Depreciation.** Any method of attributing the historical or purchase cost of an asset, across its useful life, corresponding to normal wear and tear.

(i) **Direct Cost.** A cost which can be directly and physically traced to providing food service operations.

(j) **Food Service Equipment.** A material item that retains its original shape and appearance with use, is non-expendable, does not lose its identity through incorporation into a different or more complex unit, and has a serviceable life of more than one (1) year. The equipment must be used exclusively for the school lunch operations, kept in the food service facility and used to support food service operations (e.g., ovens, coolers, dishwashers, etc.). A service truck, used exclusively in support of food service operations, is included as equipment.

(k) **Food Service Facility.** Separate, permanent structure and improvements owned by the school district for the purpose of operating and maintaining food service operations.

(l) **Food Service Operations.** The division within a school district that provides reimbursable and non-reimbursable meals for students, staff, school district personnel, and school district organizations.

(m) **Food Service Operations Repair and Maintenance.** Food service program repairs and maintenance services provided by outside repair services rather than directly by school district personnel (e.g., dishwasher maintenance, cooler repair, oven repair, etc.).

(n) **Food Service Worker.** Any food service operations employee who prepares and serves meals, cleans the food service facility, works in some clerical capacity, such as a cashier or secretary, or otherwise works directly for the food service operations.

(o) **Funding Deficit.** The negative difference created when subtracting school district food service operation allowable expenditures from school district food service operation revenues.

(p) **Indirect Cost.** A cost that is not directly identifiable with providing food services but rather is incurred as a consequence of the overall operating activities of the school district and charged back to the food service operation through an approved allocation rate and process by the Department.

(q) **Insurance.** Premium payments to insure the school district against loss or damage to a stand-alone (not attached to another building) food service facility or school district vehicle assigned to food service operations.

(r) **Inventories.** Lists for goods and materials, or those goods and materials themselves, held available in stock for food service operations.

(s) Maintenance. The activities involved in the up-keep and repair of the food service facility and equipment. This does not include the maintenance of the building structure or envelope or the replacement of any major components of the building. This would include, but is not limited to, the HVAC or electrical system or the roof.

(t) Non-reimbursable meals. Meals that do not qualify for reimbursement under the rules and regulations established by the U. S. Department of Agriculture. These meals include, but are not limited to, adult meals, incomplete meals, catered meals, and any snacks that are not reimbursed through U. S. Department of Agriculture funds.

(u) Operation. The daily activities involved in directing, managing, and supervising the food service operations.

(v) Procurement. Acquisition of goods and/or services at the best possible total cost of ownership, in the right quantity and quality, at the right time and in the right place for the direct benefit of the food service operations; generally via contract.

(w) Purchased Services. Services which are professional and technical in nature and not provided by school district personnel (food service management, food handling training, etc.).

(x) Qualifying Meals. The meals on which state reimbursement will be paid. These meals include lunches and breakfasts for which the district has received reimbursement under U. S. Department of Agriculture regulations.

(y) Qualifying School District. A school district that provides reimbursable meals to its students, experiences a funding deficit that has been covered by school district General Fund transfers, and has a Department approved application for food service financial assistance.

(z) Reimbursable meals. Meals that qualify for reimbursement under the U.S. Department of Agriculture regulations as identified in 7 CFR 210 and 7 CFR 220.

(aa) Salary. Amount paid to employees of the school district who work in the food service operations.

(bb) Supervisor. The person directly in charge of the day-to-day operation of the district food service operations.

(cc) Supplies. Material items of an expendable nature that may be consumed, worn out or deteriorate with use; or items that lose their identity through fabrication or incorporation into different or more complex units or substances. The supplies must be related to food service operations.

(dd) Utilities. Expenditures for services usually provided by public utilities such as water, sewage, electricity, gas, garbage collection, natural gas, oil, and coal used in a stand-alone food service facility.

Section 5. Allowable Expenses.

(a) Allowable expenses to be included in food service operations shall be as follows:

(i) Administrative costs and benefits, limited to:

(A) Supervisor salary and benefits;

(B) Food service worker salary and benefits; and,

(C) Clerical salary and benefits;

(ii) Contract Services;

(iii) Direct costs;

(iv) Equipment; the following shall be considered in submitting equipment expenses:

(A) Replacement of food service operations equipment attached to the building (i.e. coolers, ovens, etc.) will be allowable at the discretion of the Department. Typically these types of equipment costs are covered by major maintenance or capital construction state funding;

(B) Equipment purchases over \$25,000 require an explanation (program expansion, additional truck for new school, damaged, etc.) on the district's food service annual report; and,

(C) Written procurement standards and practices must be in place that identify the lesser of federal, state or local requirements. Federal requirements are identified as the lesser of federal procurement standards (\$500,000), state procurement standards in accordance with W.S. 21-3-110 (a) (B)(viii), or local standards. What standards are used should be identified in school district policy along with code of conduct policies. Funds saved for replacement of major equipment should be accounted for separately so those funds are not counted toward operations, thus reducing cash balance requirements.

(v) Food service repairs and maintenance by outside contract services, not school district personnel;

(vi) Insurance, including the following:

- (A) Insurance for food service facilities; and,
- (B) Insurance for food service vehicles;
- (vii) Purchased Services; and,
- (viii) Supplies.

Section 6. Non-allowable expenses.

- (a) Non-allowable expenses for food service operations shall be as follows:
 - (i) Any costs already resourced through the Education Resource Block Grant Model (i.e. maintenance and custodial services);
 - (ii) Depreciation;
 - (iii) Indirect costs;
 - (iv) Inventories; and,
 - (v) Utilities (unless the building is stand-alone used solely and directly for food service operations and not claimed as 2004-05 general fund utilities in the funding model).

Section 7. Cost of Operation.

- (a) Each school district shall report all direct costs for food service operations in the Enterprise Fund using the appropriate accounting codes in the WDE601 – Annual District Report.
- (b) Each school district shall report all indirect costs for food service operations in the Enterprise Fund using the appropriate accounting codes in the WDE601 – Annual District Report.
- (c) Each school district opting to provide free meals to students and to adults who are not food service workers shall subsidize from the General Fund and report revenue directly in the Enterprise Fund, not as a transfer, using the appropriate accounting codes in the WDE601 – Annual District Report.
- (d) Each school district opting to provide meals at less than the statewide average for each grade level shall subsidize those differences from the General Fund. The revenue shall be reported directly in the Enterprise Fund, not as a transfer, using the appropriate accounting codes in the WDE 601 – Annual District Report. The average statewide meal rates for elementary school, middle school or junior high school, and high school shall be established by the Department on or before October 1 of each year.

These rates will be used in the succeeding school year's financial assistance payment calculation.

(e) Each school district shall limit the cash balance to no more than three months worth of operating expenditures (food, salaries, benefits, supplies, general operating expenses, etc.). Adjusted cash balances shall be itemized and submitted for review to the Department.

(f) Any school lunch funds in excess of the allowable cash reserve shall be used only to maintain, expand, or improve the non-profit food service program.

(g) Each school district shall report financial data in accordance with W.S. 21-3-117 (a)(ii).

Section 8. Annual Report.

(a) Each school district shall complete an annual food service report, in a format provided by the Department, for the previous school year on or before August 15 of the succeeding school year. The annual report must include:

(i) A strategic plan for food service operations, which includes:

(A) Guidelines and standards for food safety, specifically Hazard Analysis and Critical Control Point standard operating procedures;

(B) Guidelines and standards for food service training;

(C) Guidelines and standards for food production procedures and standards, including menu planning procedures that meet the U.S. Department of Agriculture nutrition standards;

(D) Guidelines and standards for staffing requirements, including types and minimum number of staff for production and serving sites as well as supervisory structure;

(E) Comprehensive performance measures for meal production benchmarks, cost analysis for meals, and budget review procedures;

(F) A plan for equipment maintenance and replacement; and,

(G) Policies for student meal charges including collection of unpaid fees, periodic evaluation of paid meal rates for students, periodic evaluation of meal rates for adults, meals provided by the school district that are not reimbursable such as those for duty teachers and student helpers, and for non-reimbursable meals provided to children not having access to school meals.

(ii) Indication of compliance with all federal, state, and school district regulations and policies;

(iii) Identifiers showing how school districts will conduct and document periodic program evaluations reviewing program quality and performance using an instrument provided by the Department;

(iv) Documentation illustrating the creation and implementation of financial management policies and procedures including procurement standards meeting federal requirements, wage scales comparable with other school district employees, collection procedures and policies, and accounting policies;

(v) Documentation that the school district has a meal counting system that is in compliance with federal rules and regulations as identified in 7 CFR 210;

(vi) An indicator for the school district's intent to apply for the food service financial assistance; and,

(vii) Itemization of adjusted cash balances for food service operations. The school district's funding deficit will be reduced by items not approved by the Department.

Section 9. Financial Assistance Application.

(a) A school district may apply for food service financial assistance by selecting the appropriate indicator on the annual district report, as explained in Section 8.

(b) The Department shall review and notify school districts of application approval or disapproval for food service financial assistance no later than October 1 of each year.

Section 10. Financial Assistance Calculation and Payment.

(a) In order to qualify for food service financial assistance in the 2008-09 school year, a school district must:

(i) Report a funding deficit for the school year prior to the year of application; and,

(ii) Have its application, as described in Section 9, approved by the Department.

(b) Financial assistance for each qualifying school district shall be based upon a statewide per meal reimbursement computed each year by the Department as follows:

(i) Compute the statewide food service program deficit for the applicable school year based upon each school district's reported deficit information as

contained in Section 7 of these rules. The state match paid for each school district under the National School Lunch Act, U.S.C. 1751 et seq., shall be considered revenue and the statewide funding deficit shall be reduced by this amount. Any school district food service financial assistance revenue received in the prior year shall not be used to determine the funding deficit;

(ii) From the amount computed under paragraph (i) of this subsection, subtract an amount equal to ten percent (10%) of the computed statewide funding deficit under paragraph (i) of this subsection;

(iii) The amount determined under paragraph (ii) of this subsection shall be divided by the number of qualifying meals reported by all school districts for the prior school year;

(iv) Multiply the amount computed in paragraph (iii) of this subsection by the number of qualifying meals reported by the qualifying school district during the prior school year. The result is considered the food service financial assistance amount, and shall be paid by the Department to each school district not later than October 15 of the school year of application; and,

(v) In the event the total food service financial assistance amounts computed in paragraph (iv) of this subsection exceed the appropriation, the Department shall make a pro-rata payment to each qualifying school district.

(c) The food service financial assistance amount paid to each school district shall only be spent on food service operations direct costs.