



## Wyoming Department of Education

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### MEMORANDUM NO. 2009 – 008

**TO:** School District Superintendents

**FROM:** Mary Kay Hill, Director  
Administration Unit

**DATE:** January 16, 2009

**SUBJECT:** Chapter 4, Food Service Operations Rules

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#### PLEASE READ AND RESPOND AS NECESSARY

Attached you will find Final Rules for Chapter 4 –Food Service Operations along with the signed certification page.

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

Thank you.

MKH: jd

Enclosures

JAN 12 2009

Doc # 72916

Appendix A

**CERTIFICATION PAGE FOR RULES**

Adoption Date: November 17, 2008

To guarantee review by the Secretary of State within the 75 day deadline, this package must be submitted to the Secretary of State by: January 30, 2009

**GENERAL INFORMATION:**

1. Agency: Wyoming Department of Education  
 Address: 2300 Capitol Avenue  
 2<sup>nd</sup> Floor, Hathaway Building  
 Cheyenne, WY 82002-0500  
 Agency Contact Person for these Rules: Jennifer Duncan  
 Work Telephone: (307) 777-6213
  
2. Are these new rules? ("new" – means the first set of regular rules to be promulgated by this agency after the Legislature adopted a new statutory provision or significantly amended an existing statute) Yes X No \_\_\_\_\_
  
3. Chapter # and name of rules being created, **amended** or repealed: Chapter 4, Rules Governing Food Service Operations
  
4. Does this rule replace an existing rule? Yes X No \_\_\_\_\_ If yes, which chapter(s)? Chapter 4, Food Management Companies in School Lunches

**NOTICE OF INTENDED RULEMAKING TO AG, LSO AND SECRETARY OF STATE**

5. Notice of intended rulemaking containing all of the information required by W.S. 16-3-103(a) was filed with the Secretary of State on: September 12, 2008.
  
6. Notice of intended rulemaking and proposed rules in strike and underscore format were provided to the Legislative Service Office and courtesy copies of the notice and proposed rules were provided to the Attorney General and the Governor on: September 12, 2008.

**PUBLIC NOTICE OF INTENDED RULEMAKING:**

7. Yes x No \_\_\_\_\_ (If applicable) Notice was mailed 45 days in advance to all persons who make a timely request for advance notice.
  
8. Yes \_\_\_\_\_ No X A public hearing was held on the proposed rules on: \_\_\_\_\_.

**STATE OF WYOMING** }  
 Office of the Secretary  
 Filed the 12<sup>th</sup> day of January  
2009 at 9:30 A.M.  
 Max Maxfield  
 Secretary of State

**FINAL FILING FOR RULES:**

- 9. Yes x No \_\_\_ A Disk with an exact copy of the attached rules is attached or the electronic copy was sent via electronic mail to the Secretary of State on November 18, 2008.
- 10. Final rules with original signatures were sent to the Attorney General's office for the Governor's signature on November 17, 2008.
- 11. Final rules were sent to the Legislative Service Office on November 18, 2008.

**CERTIFICATION BY AGENCY:**

The undersigned certifies that the foregoing information is correct.

Date: November 17, 2008

DR. Jim McBride  
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; and  
(2) appear to be within the scope of the legislative purpose of the statutory authority.  
Therefore, I approve the same.

1/9/2009  
Date Approved

Steve Beshear  
Governor

**STATEMENT OF REASONS  
CHAPTER 4 RULES, FOOD SERVICE OPERATIONS**

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.

Chapter 4  
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.

Section 2. **Applicability.** These rules pertain to criteria and standards for determining eligible food service costs, operational standards, food service financial assistance for school year 2008-09, and annual food service reporting requirements. These rules become effective when signed by the Governor and filed with the Secretary of State's Office.

Section 3. **Promulgation, Amendment or Repeal of Rules.** Any amendments to these rules shall become effective as provided by the Wyoming Administrative Procedure Act (W.S. 16-3-101 through 16-3-115).

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

(f) **Department.** The Wyoming Department of Education.

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

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

(i) 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.

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

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

(l) 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.).

(m) 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.

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

(o) 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.

(p) 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.

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

(r) 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.

(s) 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.

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

(u) 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.

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

(w) 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.

(x) 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.

(y) 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.

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

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

(bb) 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.

(cc) 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;
  - (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;

(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 food service annual report; and

(C) 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;
  - (A) For food service facilities; and
  - (B) 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 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.

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

#### **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.

#### **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 their application, as described in Section 9, approved by the Department.

(b) Financial assistance for each qualifying school district shall be computed by the Department as follows:

(i) Compute the statewide funding deficit for the applicable school year based upon each school district's reported information in Section 7. 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 shall be subtracted from the statewide funding deficit. 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 from the 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.

(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.