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<h1>Regulatory Analysis Form</h1>		<p>This space for use by IRRC</p> <p>2001 JAN 29 PM 3:54</p> <p>REVIEW COMMISSION</p>
<p>(1) Agency</p> <p>Education</p>		<p>IRRC Number: 2102</p>
<p>(2) I.D. Number (Governor's Office Use)</p>		
<p>(3) Short Title</p> <p>School Lunch and Breakfast Reimbursements</p>		
<p>(4) PA Code Cite</p> <p>22 Pa Code, Chapter 191</p>	<p>(5) Agency Contacts &amp; Telephone Numbers</p> <p>Primary Contact: Patricia Birkenshaw, Chief Division of Food and Nutrition (717) 787-7698</p> <p>Secondary Contact:</p>	
<p>(6) Type of Rulemaking (check one)</p> <p>Proposed Rulemaking <input checked="" type="checkbox"/> X</p> <p>Final Order Adopting Regulation</p> <p>Final Order, Proposed Rulemaking Omitted</p>	<p>(7) Is a 120-Day Emergency Certification Attached?</p> <p>No <input type="checkbox"/> X</p> <p>Yes: By the Attorney General</p> <p>Yes: By the Governor</p>	
<p>(8) Briefly explain the regulation in clear and non-technical language.</p> <p>The proposed regulations specify the per-meal reimbursement rates to be paid to approved public schools, non-profit private schools, and public and non-profit residential child care institutions participating in the federal National School Lunch and/or School Breakfast Program(s).</p>		
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p>Sections 1337(b) and 1337.1 of the Public School Code of 1949, 24 P.S., §§ 13-1337 (b), 13-1337.1.</p>		

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

State law: Act 16 of 2000, Section 5, amended the Public School Code to add § 1337.1 which requires the promulgation of reimbursement rates beginning with the 2000-2001 School Year.

Federal law: Regulations (7 Code of Federal Regulations, § 210.7) require state revenue matching for the federal National School Lunch Program but do not require the revenue to be written into law.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Since 1998 schools have been required to implement new federal nutrition standards that necessitate the addition of new food products in school nutrition programs. In addition, state reimbursements for school nutrition programs have not increased in 8 years. The reimbursement rates specified in Chapter 191 will assist schools in meeting the added costs of new nutrition standards and other increased costs associated with operating food service programs.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Act 16 of 2000 is the first law in the Commonwealth mandating a specific level of state funding for school lunch and breakfast programs. Prior to State Fiscal Year 2000, the appropriation for school meals programs appeared as a line item in the Commonwealth Budget. While the level of funding has continued to increase from year to year, the proposed regulations protect schools, children, and families from reductions in school nutrition program funding and associated health risks and opportunity costs.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Approximately 900 public and non-profit private schools voluntarily participate in the National School Lunch and School Breakfast Programs in the Commonwealth. Additional revenue will accrue to these schools based on the reimbursement rates proposed in Chapter 191. The Department of Education estimates that schools will receive \$24.2 million in school lunch and breakfast reimbursements during State Fiscal Year 2000. This represents an increase of approximately \$7.5 million over the previous year. The increases in revenue will allow schools to improve nutrition standards and programs for the 1 million Commonwealth children participating in school nutrition programs every day.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no person or class adversely affected by the proposed regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The proposed regulations specify Commonwealth reimbursement rates for lunches and breakfasts served through the federal National School Lunch and School Breakfast Programs. The proposed regulations do not add state compliance requirements for the 900 sponsors of the National School Lunch and School Breakfast Programs in the Commonwealth. The regulations stipulate that schools must be in compliance with federal regulations for the National School Lunch and School Breakfast Program in order to earn the reimbursements specified in proposed Chapter 191. Compliance with these regulations and standards has been mandatory for decades and is routinely monitored by the Department.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The public was not involved in the development and drafting of the proposed regulations because the regulations indicate reimbursement rates for school lunches and breakfasts rather than new mandates or compliance issues.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed regulations specify reimbursement rates and do not, therefore, raise cost and/or saving issues associated with mandates and related compliance issues. There are no new compliance requirements included in proposed Chapter 191.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The proposed regulations specify reimbursement rates and do not, therefore, raise costs and/or savings issues associated with mandates and related compliance issues. There are no new compliance requirements included in proposed Chapter 191.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Department estimates that the revised reimbursement rates will cost the Commonwealth \$24.2 million in Fiscal Year 2000. Refer to the chart that follows.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated						
Local Government						
State Government	\$24,186,000	\$24,432,854	\$24,686,013	\$24,942,186	\$25,201,407	\$25,463,711
Total Costs	\$24,186,000	\$24,432,854	\$24,686,013	\$24,942,186	\$25,201,407	\$25,463,711
<b>REVENUE LOSSES:</b>						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The costs were determined by estimating the number of meals (breakfasts and lunches) to be served to children during the current and subsequent school years. The estimated number of meals was then multiplied by the reimbursement rates specified in proposed Chapter 191.

8/16/00

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
School Breakfast Program	\$3,133,090	\$3,315,589	\$3,270,573	\$3,932,500
National School Lunch Program	12,885,643	12,985,609	13,113,067	20,253,500
<b>TOTAL</b>	<b>\$16,018,733</b>	<b>\$16,301,198</b>	<b>\$16,383,640</b>	<b>\$24,186,000</b>

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects associated with proposed Chapter 191.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

None, as Section 1337.1 which was added to the Public School Code by Act 16 of 2000, requires that this regulation be promulgated.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

None. See above.

8/14/00

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Commonwealth reimbursement rates for school lunches and breakfasts, as specified in proposed Chapter 191, are among the highest in the nation. The Commonwealth is the only state in the nation offering financial incentives to schools for adding or expanding school breakfast programs.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings will be scheduled. Opportunity for written public comment will be available upon publication in the Pennsylvania Bulletin.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No additional reporting, record keeping, or other paperwork will be required.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

NA

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The new reimbursement rates were effective July 1, 2000. The Department will begin reimbursing schools for lunches and breakfasts served, at the new reimbursement rates, as of the effective date. Permits and licenses are not required by Chapter 191.

(31) Provide the schedule for continual review of the regulation.

The Department of Education will review the reimbursement rates specified in Chapter 191 on an annual basis.



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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2001 JAN 25 PM 3:54

LEGISLATIVE  
REVIEW COMMISSION

# 2142

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality. Attorney General

BY: [Signature]  
(DEPUTY ATTORNEY GENERAL)

OCT 24 2000

DATE OF APPROVAL

☐ Check if applicable  
Copy not approved. Objections  
attached.

Copy below is hereby certified to be a true and correct copy  
of a document issued, prescribed or promulgated by:

Department of Education

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 6-271

DATE OF ADOPTION: \_\_\_\_\_

BY: Eugene A. Hackett  
Secretary of Education

TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved :  
form and legality. Executive or Indep  
ent Agencies.

BY: [Signature]

10/3/00

DATE OF APPROVAL

(Deputy General Counsel)  
~~(Chief Counsel, Independent Agency)~~  
(Strike inapplicable title)

☐ Check if applicable. No Attorney C  
eral approval or objection within  
days after submission.

Proposed Rulemaking

Department of Education  
Title 22 - Education  
Chapter 191

Reimbursement Amounts for National  
School Lunch and Breakfast Programs

PREAMBLE

DEPARTMENT OF EDUCATION  
22 PA. CODE - EDUCATION  
CHAPTER 191: SCHOOL LUNCH AND BREAKFAST REIMBURSEMENTS

The Department of Education proposes to amend Title 22 of the Pennsylvania Code by adding a new Chapter 191 which specifies state school lunch and breakfast reimbursement rates, as set forth at Annex A, under authority of Act 16 of 2000 and Section 1337 of the Public School Code of 1949 (24 P.S. §13-1337).

Purpose

Under 13-1337(b), the Department of Education is authorized to disburse funds appropriated for school meals programs. Act 16 of 2000 specifies state reimbursement rates for eligible school breakfasts and lunches for Fiscal Year 2000-2001 and subsequent fiscal years.

The Act provides a flat reimbursement rate of 10 cents for every eligible school breakfast served and 10, 12, or 14 cents for every eligible school lunch served. "Eligible" means that meals served to children comply with federal nutrition standards for the federal National School Lunch and/or School Breakfast Program(s).

If a school participates in the National School Lunch Program but does not participate in the School Breakfast Program, the school will earn 10 cents for every lunch served. If a school participates in the National School Lunch and School Breakfast Programs, the school will earn an additional 2 cents (12 cents total) for every lunch served. If more than 20 percent of the school's enrollment participates in the School Breakfast Program, the school will earn an additional 4 cents (14 cents total) for every lunch served. The differential in reimbursement rates available for school lunches served is intended to provide an incentive for schools to offer new breakfast programs or to increase participation in existing breakfast programs.

#### **Requirements of the Regulations**

These proposed regulations specify the reimbursements to be paid to approved public schools, non-profit private schools, and public and non-profit residential childcare institutions participating in the federal National School Lunch and/or School Breakfast Program(s). The regulations also reference the requirement to comply with nutrition and other standards contained in Federal regulations (Title 7, Code of Federal Regulations, Parts 210, 220 and 245) as criteria for earning meal reimbursements submitted to the Department on monthly claims for reimbursement.

### **Cost and Paperwork Estimates**

The regulations increase reimbursements for eligible meals served in approved entities participating in the federal National School Lunch and/or School Breakfast Program(s). There are no additional paperwork requirements.

The cost of providing reimbursements for school meals for Fiscal Year 2000-2001 is estimated at \$24.2 million. Approximately 44 percent of this state appropriation (\$10.56 million) amounts to required state matching funds. Federal reimbursements for school meals in the Commonwealth amounted to approximately \$200 million in Fiscal Year 1999.

### **Effective Date**

The new reimbursement rates will become effective on July 1, 2000, in accordance with Act 16 of 2000.

### **Sunset Date**

Chapter 191 will be reviewed and the reimbursements for the National School Lunch and School Breakfast Programs fixed every school year as required by Act 16 of 2000.

### Regulatory Review

Under Section 5(a) of the Regulatory Review Act (Act) (71 P.S. §745.5(a)), on October 31, 2000, the Department submitted copies of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Education Committees. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1 Regulatory Review and Promulgation. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed regulations, they will notify the Department within 20 days from the beginning of their review period. Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

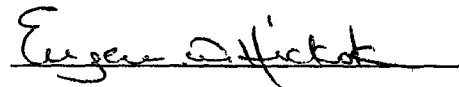
**Public Comments and Contact Person**

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Patricia Birkenshaw, Chief, Division of Food and Nutrition, Bureau of Budget and Fiscal Management, Pennsylvania Department of Education, 333 Market Street, Harrisburg, Pennsylvania 17126-0333, within 30 days following publication in the Pennsylvania Bulletin. Persons needing additional information regarding this proposal may contact Patricia Birkenshaw at (717) 787-7698 or at pbirkensha@state.pa.us.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Ms. Birkenshaw at the number referenced above or TDD (717) 787-7367.

Alternative formats of these proposed regulations (e.g., braille, large print, cassette tape) can be made available to members of the public upon request to Ms. Birkenshaw at the telephone and TDD numbers listed above.

By the Department of Education:



Eugene W. Hickok

Secretary of Education

## ANNEX A

### CHAPTER 191: SCHOOL LUNCH AND BREAKFAST REIMBURSEMENTS

Section 191.1. Purpose.

Section 191.2 Definitions.

Section 191.3 Payment of State Reimbursements.

#### § 191.1. Purpose.

This chapter provides notice of the state reimbursement rates and payment procedures for eligible school breakfasts and lunches for Fiscal Year 2000-2001 and subsequent fiscal years as required by Section 1337.1 of the Public School Code. The Department's responsibility for providing reimbursements can be found in Article XIII of the Public School Code of 1949 (24 P.S. §13-1337).

#### § 191.2. Definitions.

The following words and phrases, when used in this chapter, have the following meanings:

Eligible breakfasts and lunches—Breakfasts and lunches that meet federal nutrition standards for the National School Lunch and School Breakfast Programs as defined in Title 7, Code of Federal Regulations, Parts 210.10 and 220.8.

Eligible school—As defined in Title 7, Code of Federal Regulations, Part 210.2:

(a) any education unit of high school grade or under, recognized as part of the education system in the State and operating under public or non-profit private ownership in a single building or complex of buildings;

(b) any public or non-profit private classes of preprimary grade when they are conducted in aforementioned schools;

(c) any public or non-profit residential childcare institution or distinct part of such institution which operates principally for the care of children, and, if private, is licensed to provide residential childcare services under the licensing code by the State or a subordinate level of government, except for residential summer camps which participate in the federal Summer Food Service Program for Children, Job Corps centers funded by the federal Department of Labor, and private foster care homes.



Reimbursements—State payments to School Food Authorities that are in compliance with federal National School Lunch and/or School Breakfast Program(s) regulations as specified in Title 7, Code of Federal Regulations, Parts 210, 220, and 245 as amended.

School Food Authority—The governing body which is responsible for the administration of one or more schools and has the legal authority to operate the National School Lunch and/or School Breakfast Program(s).

School lunch program—The federal National School Lunch Program as permanently authorized in the National School Act (42 U.S.C. 1751) of 1946 and as amended.

School breakfast program—The federal School Breakfast Program as permanently authorized in amendments to the Child Nutrition Act of 1966, Public Law 94-105.

Schools that participate—Any public school district, intermediate unit, charter school, area vocational-

technical school, tax exempt private or parochial school, public residential childcare institution or tax exempt private residential childcare institution, participating in the National School Lunch and/or School Breakfast Program(s) as approved by the Department, and in compliance with the requirements of Title 7, Code of Federal Regulations, Parts 210, 220, and 245.

**§ 191.3. Payment of State Reimbursements.**

(a) Reimbursements will be paid to participating School Food Authorities for eligible breakfasts and lunches served to children.

(b) Reimbursements will be paid to a School Food Authority (SFA) after the SFA submits a monthly claim for reimbursement to the Department for review and approval.

(c) Reimbursements paid will not be less than the following amounts for state Fiscal Year 2000 and subsequent fiscal years:

(i) schools that participate in the school breakfast program will receive 10 cents for every eligible breakfast served;

(ii) schools that participate in the school lunch program will receive 10 cents for every eligible lunch served if the schools do not participate in the school breakfast program;

(iii) schools that participate in both the school lunch and school breakfast programs will receive an incentive reimbursement of 2 cents (12 cents total) for every eligible lunch served if 20 percent or less of the school's enrollment participates in the school breakfast program;

(iv) schools that participate in both the school lunch and school breakfast programs will receive an incentive reimbursement of 4 cents (14 cents total) for every eligible lunch served if more than 20 percent of the school's enrollment participates in the school breakfast programs.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
333 MARKET STREET  
HARRISBURG, PENNSYLVANIA 17126-0333

SECRETARY OF EDUCATION

January 25, 2001

717-787-5820 (TEL)  
717-787-7222 (FAX)  
717-783-8445 (TTY)

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17126

Dear Mr. Nyce:

Enclosed is a copy of a proposed regulation Chapter 191 for review by your Commission pursuant to the Regulatory Review Act. This regulation relates to reimbursement amounts for national school lunch and breakfast programs.

The regulation was delivered to the Standing Committees on Education and Independent Regulatory Review Commission on October 31, 2000 and was published in the Pennsylvania Bulletin on November 11, 2000. This regulation is subject to the procedures established in the Regulatory Review Act regarding sine die adjournment. The Standing Committees having been designated, the regulation is being resubmitted at this time. Under the sine die adjournment provisions of the Act, the 20-day review period for the Standing Committees begins on the date of their receipt of this resubmitted proposed regulation. The Act provides that the Commission shall, within 10 days from the closing date of the Committees' review period, submit its comments to the Department regarding the regulations.

The Department of Education will provide your Commission with any assistance you may require to facilitate a thorough review of this proposed regulation.

Thank you for your consideration.

Sincerely,

*Eugene W. Hickok*

Eugene W. Hickok

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 6-271

2001 JAN 25 PM 3:54

SUBJECT: Reimbursement Amounts for National School Lunch and Breakfast Programs

REVIEW COMMISSION

AGENCY: DEPARTMENT OF EDUCATION

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

1/25/01 Cleanor Lomen HOUSE COMMITTEE ON EDUCATION

1/25/01 Gynda Williams

1/25/01 J. Ginges SENATE COMMITTEE ON EDUCATION

1/25/01 V. O'Leary

1/25/01 E. Pagan INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

January 25, 2001