



Rules of
Department of Elementary and
Secondary Education
Division 30—Division of Financial and
Administrative Services
Chapter 680—Food and Nutrition Services

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**Title 5—DEPARTMENT OF
ELEMENTARY AND
SECONDARY EDUCATION**

**Division 30—Division of Financial and
Administrative Services
Chapter 680—Food and Nutrition Services**

**5 CSR 30-680.010 National School Meals
Program**

PURPOSE: The State Board of Education (board) is authorized and directed to cooperate with the secretary of agriculture to administer programs to provide meals to students. This rule establishes the regulations for the establishment, maintenance, and operation of the national school meals program, including: determining eligibility for Free and Reduced Price Meals and Milk in Schools; the National School Lunch Program; and the School Breakfast Program.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The Department of Elementary and Secondary Education (department) is authorized and directed to cooperate with the secretary of agriculture to administer programs to provide meals to students in the following programs:

(A) Determining Eligibility for Free and Reduced Price Meals and Milk in Schools.

1. This rule details state and local responsibilities, as outlined in 7 CFR part 245, which is used to determine eligibility and establish procedures for extending free and reduced price meals and free milk to eligible children from economically needy families. Specific areas in this rule include eligibility standards, public announcements, applications, hearing procedures, and nondiscrimination practices. This rule enables the department to calculate students in districts that elect other Special Provision Options to include Provision 1, Provision 2, and Provision 3 in the same manner as is used for the United States Department of Agriculture (USDA) Community Eligibility Option as stated in section 163.011(6), RSMo;

(B) Administration of the National School

Lunch Program.

1. This rule details state and local responsibilities, as outlined in 7 CFR part 210, for the administration of the National School Lunch Program including, but not limited to, requirements for participation, requirements for lunches, free and reduced price lunches, reimbursement payments, management evaluations, and audits; and

(C) School Breakfast Program.

1. This rule details the state and local responsibilities, as outlined in 7 CFR part 220, for the administration of the School Breakfast Program, and as also outlined in sections 191.800-191.815, RSMo.

A. The USDA's School Breakfast Program, as authorized by 42 U.S.C. section 1773, shall be established in each public school district in the state in each school under its authority in which thirty-five percent (35%) or more of the students enrolled in the school were eligible for free or reduced price meals on October 1 of the preceding school year.

B. In subsequent years, any school within a school district where the percentage of students approved to receive free or reduced price school meals is thirty-five percent (35%) or more of the enrollment as of October 1, the School Breakfast Program must be established by July 1 of the following school year.

C. To determine the participation requirement, as of October 1 of each school year for each school which does not operate the School Breakfast Program, the school district must determine the enrollment of the school, the number of students approved according to federal guidelines to receive free or reduced price school meals, and the percentage of students enrolled in the school approved to receive free or reduced price school meals. The percentage of students approved to receive free or reduced price school meals is obtained by dividing the total number of students approved to receive free or reduced price school meals by the enrollment.

D. Documentation of the participation determination for each school which does not operate the School Breakfast Program shall be provided to the department on a form as may be required by the department no later than February 1 of each year. This documentation also shall be maintained at the school district office and shall be made available for review by interested individuals.

E. A review of the documentation records relating to the School Breakfast Program participation requirement will be made by representatives of the department during school food service on-site reviews. School

districts determined not to be in compliance with the School Breakfast Program participation requirement will be given sixty (60) days to initiate the School Breakfast Program in schools where required or request a School Breakfast Program waiver as outlined in paragraph (1)(C)2.

2. School Breakfast Program Participation Waiver.

A. A public school district may receive a waiver from the department for the School Breakfast Program requirement described in paragraph (1)(C)1. The board of education of the school district seeking a waiver must adopt by majority vote a resolution requesting a waiver from the School Breakfast Program requirement.

B. A written request for a waiver shall be filed with the department and shall contain the name of the school district, the name(s) of the school(s) to which the waiver applies, the enrollment and number of students approved to receive free or reduced price school meals in each school, a statement indicating the board of education's reason(s) for the waiver, the date of the board action, the effective date of the waiver, and the signature of the board president, board secretary, or superintendent.

C. A request for a waiver may be submitted at any time during the year, but should be submitted before July 1. Following department approval, a waiver will be valid for a period of three (3) years. At the end of that time, the request process must be repeated. A board of education may rescind a waiver at any time.

D. Documentation of the waiver must be kept on file at the school district office and made available for review by interested individuals.

3. School Breakfast Program Hardship Grant Program.

A. Subject to appropriation of funds for this purpose, state supplemental funds will be distributed through the School Breakfast Program Hardship Grant Program. Application for School Breakfast Program Hardship Grant Program funds may be made by public school districts participating in the School Breakfast Program to the department any time after July 1 but no later than November 1 of the school year following the year for which supplemental funds are being requested (grant year). Each application shall contain information as may be required to enable the department to dispense funds under the provisions of this rule.

B. Priority for allocating funds under the School Breakfast Program Hardship Grant Program shall be based upon a need factor, which will be the percentage (by school) of free and reduced price student



breakfasts served of total student breakfasts served during the grant year. To determine school priority, a ranking from the highest to the lowest by need factor will be made.

C. Following the priority ranking of schools, supplemental funds will be distributed to schools according to the student breakfasts served during the grant year. Distribution of funds for breakfasts served will be made in the order of—student free breakfasts, student reduced price breakfasts, and student paid breakfasts. In each instance, the combined funds received by a school per breakfast from all sources, federal, local, and state, shall not exceed the district per breakfast cost.

D. In the event that insufficient funds are appropriated to allow for a complete allocation to schools that apply, a proration of the funds provided will be made. First priority for the allocation of prorated funds will be schools classified under federal guidelines as severe need breakfast schools. Second priority will be schools serving thirty-five percent (35%) or more free and reduced price breakfasts. Third priority will be all other schools that apply. The distribution of funds will be the same as outlined in subparagraph (1)(C)3.C. of this rule, except that funds for free and reduced price meals will be distributed in all levels before being distributed for paid meals.

4. Outreach Activities. The department shall collaborate with other agencies responsible for administering emergency and supplemental food programs in designing and implementing food program outreach activities. Department outreach activities shall be focused on information concerning the School Breakfast Program and may include written materials, brochures, newsletters, news releases, public service announcements, and videos.

(2) 7 CFR parts 210, 220, and 245, and 42 U.S.C. section 1773 are hereby incorporated by reference and made part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, in August 2021. Copies of these regulations can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at <https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials>. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 161.092, 167.201, 178.430, and 191.800-191.815, RSMo 2016. This rule was previously filed as 5 CSR 40-680.010. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. Amended: Filed June 11, 1976, effective Oct. 1, 1976. Amended: Filed July 6, 1976, effective Nov. 1, 1976. Amended: Filed Nov. 12, 1976, effective March 1, 1977. Amended: Filed Feb. 3, 1977, effective June 1, 1977. Amended: Filed July 10, 1978, effective Oct. 16, 1978. Amended: Filed Jan. 31, 1979, effective May 14, 1979. Amended: Filed Aug. 16, 1979, effective Nov. 12, 1979. Amended: Filed Oct. 11, 1979, effective Jan. 14, 1980. Amended: Filed Dec. 7, 1979, effective March 14, 1980. Amended: Filed March 4, 1980, effective July 1, 1980. Amended: Filed June 26, 1980, effective Nov. 17, 1980. Amended: Filed Sept. 12, 1980, effective Dec. 15, 1980. Amended: Filed Nov. 17, 1980, effective March 16, 1981. Amended: Filed Feb. 3, 1981, effective May 12, 1981. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed April 26, 1982, effective Aug. 13, 1982. Amended: Filed Aug. 27, 1982, effective Dec. 13, 1982. Amended: Filed Jan. 24, 1983, effective May 16, 1983. Amended: Filed Feb. 25, 1983, effective June 13, 1983. Amended: Filed June 7, 1983, effective Sept. 12, 1983. Amended: Filed July 20, 1983, effective Nov. 14, 1983. Amended: Filed Oct. 5, 1983, effective Jan. 16, 1984. Amended: Filed June 12, 1984, effective Sept. 14, 1984. Amended: Filed June 28, 1985, effective Oct. 1, 1985. Amended: Filed June 17, 1986, effective Sept. 12, 1986. Amended: Filed Nov. 26, 1986, effective Feb. 12, 1987. Amended: Filed April 8, 1987, effective June 25, 1987. Amended: Filed May 27, 1987, effective Aug. 27, 1987. Amended: Filed Sept. 25, 1987, effective Dec. 24, 1987. Amended: Filed March 1, 1988, effective May 26, 1988. Amended: Filed Sept. 9, 1988, effective Dec. 12, 1988. Amended: Filed April 28, 1989, effective July 27, 1989. Amended: Filed May 23, 1990, effective Sept. 28, 1990. Amended: Filed Oct. 23, 1991, effective March 9, 1992. Amended: Filed Aug. 19, 2021, effective March 30, 2022.*

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013, 2014; 167.201, RSMo 1963; 178.430, RSMo 1963; 191.800-191.813, RSMo 1992; and 191.815, RSMo 1992, amended 1993, 1995.*

5 CSR 30-680.020 Special Milk Program for Children

PURPOSE: This rule details state and local responsibilities for the administration of the Special Milk Program for Children including,

but not limited to, requirements for participation, reimbursement payments, administrative analyses, and audits.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule incorporates federal regulations, as contained in 7 CFR part 215, which are used to administer the Special Milk Program for Children. Specific areas in this rule include requirements for participation, reimbursement procedures, administrative analyses, and audits. 7 CFR part 215 of the *Code of Federal Regulations*, which is incorporated by reference and made a part of this rule by the Office of the Federal Register, Office of Administration, is available by contacting the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, as published in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at <https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials>. This rule does not include any later amendments or additions.

AUTHORITY: sections 161.092 and 178.430, RSMo 2016. This rule was previously filed as 5 CSR 40-680.020. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. Amended: Filed Aug. 9, 1976, effective Dec. 1, 1976. Amended: Filed Feb. 13, 1978, effective May 15, 1978. Amended: Filed July 13, 1979, effective Oct. 12, 1979. Amended: Filed Aug. 16, 1979, effective Nov. 12, 1979. Amended: Filed Feb. 3, 1981, effective May 12, 1981. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed April 26, 1982, effective Aug. 13, 1982. Amended: Filed June 7, 1983, effective Sept. 12, 1983. Amended: Filed June 12, 1984, effective Sept. 14, 1984. Amended: Filed April 8, 1987, effective June 25, 1987. Amended: Filed May 27, 1987, effective Aug. 27, 1987. Amended: Filed Sept. 25, 1987, effective*



Dec. 24, 1987. Amended: Filed Oct. 23, 1991, effective March 9, 1992. Amended: Filed Aug. 19, 2021, effective March 30, 2022.

*Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013, 2014, and 178.430, RSMo 1963.

5 CSR 30-680.030 School Breakfast Program
(Rescinded March 30, 2022)

AUTHORITY: section 178.430, RSMo 1986. This rule was previously filed as 5 CSR 40-680.030. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. Amended: Filed Sept. 13, 1976, effective Jan. 1, 1977. Amended: Filed Dec. 27, 1976, effective April 11, 1977. Amended: Filed Aug. 16, 1979, effective Nov. 12, 1979. Amended: Filed Oct. 11, 1979, effective Jan. 14, 1980. Amended: Filed Dec. 7, 1979, effective March 14, 1980. Amended: Filed March 4, 1980, effective July 1, 1980. Amended: Filed Nov. 17, 1980, effective March 16, 1981. Amended: Filed Jan. 27, 1981, effective May 12, 1981. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed April 26, 1982, effective Aug. 13, 1982. Amended: Filed June 7, 1983, effective Sept. 12, 1983. Amended: Filed Oct. 5, 1983, effective Jan. 16, 1984. Amended: Filed June 12, 1984, effective Sept. 14, 1984. Amended: Filed June 28, 1985, effective Oct. 1, 1985. Amended: Filed May 27, 1987, effective Aug. 27, 1987. Amended: Filed Sept. 25, 1987, effective Dec. 24, 1987. Amended: Filed April 28, 1989, effective July 27, 1989. Amended: Filed Oct. 23, 1991, effective March 9, 1992. Amended: Filed Dec. 21, 1992, effective Aug. 9, 1993. Rescinded: Filed Aug. 19, 2021, effective March 30, 2022.

5 CSR 30-680.035 Food Service Equipment Assistance Program

PURPOSE: This rule incorporates the federal regulations published in 7 CFR part 230, governing the Nonfood Assistance Program, which implement P.L. 94-105. State responsibilities for program administration and the role of the division in planning equipment acquisition are outlined. Specific procurement standards and property management requirements are incorporated into the regulations.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule

would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule details state and local responsibilities, as outlined in 7 CFR part 230, for administering the Food Service Equipment Assistance Program. Specific areas in this rule include use of funds, requirements for participation, reimbursement payments, claims for reimbursement, management evaluations and audits, procurement standards, and property management requirements. 7 CFR part 230 is hereby incorporated by reference and made a part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, as published in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at <https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials>. This rule does not include any later amendments or additions.

AUTHORITY: sections 161.092 and 178.430, RSMo 2016.* This rule was previously filed as 5 CSR 40-680.035. Original rule filed Oct. 14, 1976, effective Feb. 1, 1977. Amended: Filed Aug. 16, 1979, effective Nov. 12, 1979. Amended: Filed June 26, 1980, effective Nov. 17, 1980. Amended: Filed April 26, 1982, effective Aug. 13, 1982. Amended: Filed Aug. 19, 2021, effective March 30, 2022.

*Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013, 2014, and 178.430, RSMo 1963.

5 CSR 30-680.040 Cash in Lieu of Commodities

PURPOSE: This rule details state and local administrative responsibilities for distributing and accounting for funds received in lieu of commodities.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule

would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule details state and local responsibilities, as outlined in 7 CFR part 240, which are used to distribute cash in lieu of commodities and specify how these funds may be used. Specific areas in this rule include apportionment of funds, use of funds, payments to schools, records, and reports. 7 CFR part 240 is hereby incorporated by reference and made a part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at <https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials>. This rule does not include any later amendments or additions.

AUTHORITY: sections 161.092 and 178.430, RSMo 2016.* This rule was previously filed as 5 CSR 40-680.040. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. Amended: Filed Dec. 27, 1976, effective April 15, 1977. Amended: Filed Aug. 19, 2021, effective March 30, 2022.

*Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013, 2014, and 178.430, RSMo 1963.

5 CSR 30-680.050 Determining Eligibility for Free and Reduced Price Meals and Milk in Schools
(Rescinded March 30, 2022)

AUTHORITY: section 161.092, RSMo Supp. 2014, and section 178.430, RSMo 2000. This rule was previously filed as 5 CSR 40-680.050. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. Amended: Filed July 13, 1976, effective Nov. 1, 1976. Amended: Filed Aug. 9, 1976, effective Dec. 1, 1976. Amended: Filed June 21, 1977, effective Oct. 17, 1977. Amended: Filed Jan. 31, 1979, effective May 14, 1979. Amended: Filed July 13, 1979, effective Oct. 12, 1979. Amended: Filed Aug. 16, 1979, effective Nov. 12, 1979. Amended: Filed Nov. 17, 1980, effective



March 16, 1981. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed April 26, 1982, effective Aug. 13, 1982. Amended: Filed June 7, 1983, effective Sept. 12, 1983. Amended: Filed July 10, 1984, effective Oct. 15, 1984. Amended: Filed July 1, 1987, effective Sept. 24, 1987. Amended: Filed May 23, 1990, effective Sept. 28, 1990. Amended: Filed Oct. 23, 1991, effective March 9, 1992. Amended: Filed April 21, 2016, effective Nov. 30, 2016. Rescinded: Filed Aug. 19, 2021, effective March 30, 2022.

5 CSR 30-680.060 Food Distribution

PURPOSE: This rule details state and local administrative responsibilities regarding commodities received under the Food Distribution Program for use in school feeding programs.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule details state and local responsibilities, as outlined in 7 CFR part 250, which are used to administer the Food Distribution Program. Specific areas in this rule include availability of donated foods, eligible recipients, disposition of damaged or out-of-condition foods, and obligations and responsibilities of states and recipient agencies which enter into agreement with food processors. 7 CFR Part 250 is incorporated by reference and made a part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at <https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials>. This rule does not include any later amendments or additions.

AUTHORITY: sections 161.092 and 167.201,

RSMo 2016. This rule was previously filed as 5 CSR 40-680.060. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. Amended: Filed May 13, 1976, effective Sept. 1, 1976. Amended: Filed Aug. 9, 1976, effective Dec. 1, 1976. Amended: Filed Oct. 13, 1978, effective Jan. 15, 1979. Amended: Filed Sept. 25, 1981, effective Jan. 15, 1982. Amended: Filed March 27, 1989, effective June 29, 1989. Amended: Filed Aug. 19, 2021, effective March 30, 2022.*

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013, 2014, and 167.201, RSMo 1963.*

5 CSR 30-680.070 Summer Food Service Program—Request for Waiver

PURPOSE: Senate Bill 449, the Hunger Relief Act, outlines provisions for participation in the United States Department of Agriculture's Summer Food Service Program as authorized under 42 U.S.C. 1761 by eligible service institutions. Eligible service institutions include public nonprofit school food authorities. This rule describes the process by which public nonprofit school food authorities may obtain a waiver excusing them from participating in the Summer Food Service Program.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The Summer Food Service Program is authorized by 42 U.S.C. section 1761, which is hereby incorporated by reference and made a part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, as published in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at <https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials>. This rule does not include any later amendments or additions.

(2) Summer Food Service Participation Waiver.

(A) A public school district may receive a waiver from participating in the Summer Food Service Program from the Department of Elementary and Secondary Education (department). The board of education of the school district seeking a waiver must adopt by majority vote a resolution requesting a waiver from participating in the Summer Food Service Program.

(B) A written request for a waiver shall be filed with the department and shall contain the name of the school district, a statement indicating the board of education's reason(s) for the waiver, the date of the board action, the effective date of the waiver, and the signature of the board president, board secretary, or superintendent.

(C) A request for a waiver may be submitted at any time during the year but should be submitted before the end of the school year. Following department approval of a waiver, it will be valid for a period of three (3) years. At the end of that time, the request process must be repeated. A board of education may rescind a waiver at any time.

(D) Documentation of the waiver must be kept on file at the school district office and made available for review by interested individuals.

AUTHORITY: sections 161.092 and 191.810, RSMo 2016.* Original rule filed Dec. 21, 1992, effective Aug. 9, 1993. Amended: Filed Aug. 19, 2021, effective March 30, 2022.

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013, 2014, and 191.810, RSMo 1992.*

5 CSR 30-680.080 School Food Authority Appeal Procedures

PURPOSE: This rule establishes the appeal procedures when a school food authority requests a review of a denial of all or part of a claim for reimbursement, or for withholding payment arising from administrative review activity conducted by the Department of Elementary and Secondary Education (department) under 7 CFR section 210.18.

(1) The department, through an agreement with the Food and Nutrition Service, United States Department of Agriculture, administers the School Lunch Program and the Commodity School Program. Each Local Education Agency (LEA) has a School Food Authority (SFA) that requests reimbursement from the department for expenses related to the administration of the two (2) programs mentioned above. The department makes the



financial decisions regarding claims for reimbursement filed with it. If a SFA disagrees with the department's fiscal action determination, the SFA may file an appeal with the department.

(A) The SFA may file an appeal with the department because of a denial of all or part of a claim for reimbursement, reclaim, or withholding of payment resulting from an administrative review conducted by the department under 7 CFR section 210.18.

(B) The department's action shall remain in effect during the appeal process.

(2) Appeal Procedure.

(A) To make an appeal, the SFA must state in writing whether it is requesting a written review or a hearing. Both reviews will be fair and impartial and will be before an independent official.

(B) The appeal request must identify the state action being appealed and be signed by the SFA's authorized office school administrator.

(C) All written appeal requests shall be sent to the following address:

ATTN: Governmental Affairs/Food Service Authority Appeal
 Department of Elementary and Secondary Education
 PO Box 480
 Jefferson City, MO 65102-0480
 Or counsel@dese.mo.gov, with "Food Service Authority Appeal" in the subject line

(D) All written requests for review must be postmarked by the U.S. Postal Service (or equivalent private delivery service) or delivered to the department within fifteen (15) calendar days of the SFA's receipt of the state agency notice of the denial of all or part of the claim for reimbursement of withholding of payment. If the appeal is sent by email, the department must receive the email within fifteen (15) calendar days of the SFA's receipt of the state agency notice of the denial of all or part of the claim for reimbursement of the withholding of payment. If the fifteenth calendar day falls on a Saturday, Sunday, or federal holiday, requests will be timely if it is postmarked or delivered the next business day that is not a Saturday, Sunday, or federal holiday. The department will not consider untimely appeals.

(E) The department shall acknowledge the receipt of the request for appeal within 10 (ten) calendar days by contacting the SFA's authorized office school administrator via email.

(F) The review official shall conduct a written review or a hearing as specified in the request by the appellant SFA. Regardless of

which review is conducted, the department shall provide the opportunity for the SFA to review any information obtained or created by the department upon which the notice of withholding was based. The SFA may make requests for the department's information to the review officer. However, audit investigation notes or other material that may reveal investigation techniques, material prepared for submission to the review officer in preparation for appeal, or confidential information need not be provided.

(3) Written Review of the Record.

(A) If the SFA requests a written review of the record, the SFA will have the right to submit written information to the review official.

(B) The department will also have the right to submit written information to the review official.

(C) The commissioner of education (commissioner) will designate a review official to conduct the written review. The review official shall be an independent and impartial officer.

(D) The review official shall make a recommended decision to the commissioner within sixty (60) days after the receipt of all documents from the SFA, unless good cause for delay is demonstrated. The recommended decision will be whether to uphold, reverse, or modify the department's action based on review of the documentation and information provided by the SFA and the department, and on program regulations.

(E) The commissioner will decide whether to approve or disapprove the review official's recommended decision. The commissioner's decision will be sent to the SFA by certified mail, return receipt requested, or equivalent service, or electronically by email, or facsimile. The decision will be sent to the department via email.

(F) The commissioner shall render a decision on or before one hundred twenty (120) days from the date of request for appeal.

(G) The final determination will take effect on the date of the commissioner's decision, which is the final administrative decision for purposes of review under section 536.150, RSMo.

(4) Hearings.

(A) If the SFA requests a hearing, the review official shall hold a hearing within forty-five (45) days of the department's receipt of the appeal. Upon request from either party or in the event of scheduling conflicts, the department may hold the hearing at a later date.

(B) The review official shall provide the parties with at least ten (10) days advance

written notice of the time, date, location, and case number of the hearing. The department will send the notice either by certified mail or its equivalent, or electronically by email, or facsimile.

(C) The commissioner will designate a review official to conduct hearings. The review official shall be an independent and impartial officer.

(D) Legal counsel may represent the SFA.

(E) Failure of the SFA or SFA's representative to appear at a scheduled hearing shall constitute a waiver of the right to a personal appearance before the review official.

(F) A representative of the department will attend the hearing to provide testimony and written information and to answer questions from the review official. The department representative may be represented by legal counsel at the hearing.

(G) The department will conduct the hearings as contested case hearing as pursuant to Chapter 536, RSMo.

(H) A court reporter will transcribe the hearings and will swear in witnesses before testifying.

(I) The review official shall make a recommended decision to the commissioner within sixty (60) days after receipt of the transcript of the hearing. The recommended decision will be whether to uphold, reverse, or modify the state agency's action based on review of the documentation and testimony presented at the hearing and on program regulations. The commissioner will decide whether to approve or disapprove the review official's recommended decision. The commissioner's decision will be sent to the SFA by certified mail, return receipt requested, or equivalent service, or electronically by email, or facsimile. The decision will be sent to the department via email.

(J) The commissioner must render a decision on or before one hundred twenty (120) days after receipt of the transcript of the hearing.

(K) The final determination shall take effect on the date of the commissioner's decision which is the final administrative decision for purposes of review under sections 536.100-536.140, RSMo.

AUTHORITY: sections 161.092 and 178.430, RSMo 2016. Original rule filed April 23, 2021, effective Dec. 30, 2021.*

**Original authority: 161.092, RSMo 1963, amended 1973, 2002, 2003, 2013, 2014, and 178.430, RSMo 1963.*